

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:21-cr-00005-O-1
)
Government,) FORT WORTH, TEXAS
)
VS.) JANUARY 26, 2023
)
THE BOEING COMPANY,)
)
Defendant.) 9:00 A.M.

VOLUME 1 of 1
TRANSCRIPT OF ARRAIGNMENT
BEFORE THE HONORABLE REED C. O'CONNOR
UNITED STATES DISTRICT COURT JUDGE

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P R O C E E D I N G S

JANUARY 26, 2023

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THE COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated. This is Case
No. 4:21-cr-5, United States v. Boeing.

Counsel for the government is here.

Counsel for the movants are here.

We have counsel for Boeing here.

Mike Delaney?

MR. DELANEY: Yes, sir.

THE COURT: Okay. Would you and your counsel
please stand?

Has Boeing received a copy of the felony
information alleged against it in this case?

MR. DELANEY: Yes, sir.

THE COURT: All right. And are you authorized to
act for Boeing here today?

MR. DELANEY: Yes, sir.

THE COURT: Do you want me to have this
information read aloud here this morning?

MR. DELANEY: No, sir.

MR. HATCH: No, sir.

THE COURT: All right. Then to this information,
how does Boeing plead?

1 MR. FILIP: Your Honor, if I may speak very
2 briefly before Mr. Delaney enters a plea, if that's okay?

3 THE COURT: On what issue?

4 MR. FILIP: I just want to make clear, please,
5 sir, that, as the Court knows, Boeing has entered into a
6 Deferred Prosecution Agreement in this case. We want to
7 make very clear to the Court and to the government that
8 Boeing intends to abide by the representations and
9 commitments that are in that agreement that it's been
10 abiding by for two years' time.

11 THE COURT: Very good.

12 MR. FILIP: And will continue to do so.

13 THE COURT: Very good.

14 MR. DELANEY: Not guilty, sir.

15 THE COURT: Not guilty? Okay.

16 And what does the government say to that?

17 MS. LARYEA: Good morning, your Honor. Lorinda
18 Laryea for the United States. As Boeing counsel said, the
19 government has agreed to deferred prosecution in this case.

20 And so, under the Deferred Prosecution Agreement,
21 the government does not believe it requires Boeing to plead
22 guilty in this case.

23 THE COURT: All right. Very good.

24 You all may be seated.

25 I will enter a not guilty plea on behalf of

1 Boeing.

2 And I will forward it to you, Mr. Cassell.

3 MR. CASSELL: Yes. Your Honor, I would like to
4 introduce, with the Court's permission, counsel, and then
5 the families who will be speaking this morning for your
6 Honor's benefit, Paul Cassell for the family
7 representatives, along with Tracy Brammeier, Bob Clifford,
8 Erin Applebaum, Chase Hilton, our local counsel.

9 Seated in the courtroom we anticipate that
10 there will be 12 of the crash victims who will have
11 representatives speaking here this morning. And then I'm
12 hoping I can follow up by briefly making some points on --
13 legal points on conditions of release.

14 We have here today Naoise Connolly Ryan who is the
15 representative of Mick Ryan. And then we have Catherine
16 Berthet, who is a representative of Camille Geoffroy.
17 Geoffroy, I believe it is. Zipporah Kuria who is a
18 representative of Joseph Kuria Waithaka.

19 Nadia Milleron and Michael Stumo who are
20 representatives of Samya Rose Stumo. Chris Moore who is a
21 representative of Danielle Moore.

22 Paul Njoroge who is a representative of Caroline
23 Karanja, Ryan Njoroge, Kellie Pauls, and Rubi Pauls.

24 Paul Kiernan who is a representative of Joanna
25 Toole. Naheed Noormohamed who is a representative of Ameen

1 Noormohamed.

2 We have Ike and Susan Riffel who are
3 representatives of Bennett Riffel and Melvin Riffel. And
4 then, Brittney Riffel is here also. She's a representative
5 of Melvin Riffel, and Emma Riffel is here as well. She was
6 born two months after the crashes.

7 And then following that presentation, I would like
8 a brief opportunity to address conditions of release.

9 THE COURT: Okay.

10 MR. CASSELL: Without any further delay, I tried
11 to emphasize how many matters the Court has on the court,
12 they will be brief.

13 I would like to introduce Naoise Connolly Ryan.

14 THE COURT: Okay. Please come up. Ma'am, would
15 you raise your hand to be sworn, please?

16 (The oath was administered.)

17 MS. RYAN: I do.

18 THE COURTROOM DEPUTY: Thank you, ma'am.

19 MS. RYAN: Thank you.

20 Your Honor, thank you very much for today.

21 THE COURT: Yes.

22 MS. RYAN: I'm just going to read my impact
23 statement, if that's okay?

24 THE COURT: Yes. Uh-huh.

25 MS. RYAN: My name is Naoise Connolly Ryan. My

1 husband, Mick Ryan, was killed in the Ethiopian plane crash
2 ET302. I have traveled here today from Ireland with my two
3 young children in the hope of justice.

4 The 10th of March 2019 is a day I will never
5 forget. It changed our lives forever. Although we had been
6 married 12 years as a family, in a way, life was only
7 beginning.

8 We had our beautiful three-year-old daughter and
9 our newborn son, and we couldn't have been happier. Mick
10 was our joy. He had a big heart and a big smile. His sense
11 of humor and his passion for people and for life broke down
12 many barriers as he traveled across the globe working for
13 the United Nations World Food Programme as the Global Deputy
14 Chief Engineer of the United Nations World Food Programme,
15 Mick was based in headquarters in Rome. Like most
16 humanitarians, however, his work took him to many dangerous
17 and risky places. He worked in countries with Ebola, civil
18 unrest, war, and terrorism.

19 He witnessed unimaginable atrocities. He loved
20 his work, and his passion was to make the world a better
21 place.

22 Mick lived his life with passion. To him, people
23 were what matters and being an engineer working for the
24 World Food Programme enabled him to help the most vulnerable
25 people in the world. He was a first responder when it came

1 to global emergencies. He believed engineering lay at the
2 heart of the WFP motto, to change lives and save lives.

3 If you provide people with the infrastructure and
4 a safe place to work, to play and to live, you can build an
5 environment and a society that is better equipped to support
6 itself. You can give people hope. This was his vision.

7 But four years ago all our dreams ended. Mick was
8 traveling with the United Nations from Addis Ababa to
9 Nairobi. He put himself forward to attend a workshop in
10 Nairobi to help expand the WFP engineering program across
11 all of Africa.

12 I was in Ireland at the time with our two young
13 children preparing to travel back to Rome. When he landed
14 in Addis, he tried to call me, but it was in the middle of
15 the night in Ireland. In the end, he just sent me a simple
16 message to say he had landed in Addis and that he was on his
17 way to Nairobi, and he signed it off with a kiss.

18 There was nothing to fear. This was not a
19 dangerous mission. I woke early the next morning and saw
20 his message. I replied with, "Good morning, daddy," with a
21 picture of the kids in bed, smiling up at the camera. I
22 knew it would make him so happy to see them. Message sent,
23 but it never delivered.

24 Since losing Mick, I have experienced unimaginable
25 trauma and suffering. The life we once knew, the joy, the

1 laughter has all been obliterated from our lives. I'm stuck
2 in a never-ending time loop that brings me right back to the
3 10th of March time and time again.

4 The nightmares of planes falling from the sky,
5 visions of what Mick must have experienced, the absolute
6 terror, how he must have felt, the thoughts that must have
7 gone through his head in those final moments.

8 For the first year after the crash, I didn't
9 sleep. It was easier not to sleep. Sleep brought no
10 comfort, just more nightmares. But I had a young baby and a
11 young child that needed me. I needed to find the strength
12 to look after our children.

13 So I started to hope. Hope that justice would
14 prevail and that those that were culpable, the CEOs of
15 Boeing, Muilenburg, and Calhoun in particular, that they
16 would be held to account.

17 My children are growing up fast. The past four
18 years of their young lives have been traumatic and
19 impossibly sad.

20 They suffer from anxiety that they will lose their
21 mother too. My son calls me continuously when we are at
22 home to try and reassure himself that I am still there.

23 My daughter has cried out for her daddy in the
24 middle of the night. She remembers him, but the memories
25 are fading and she gets anxious about forgetting him.

1 She has one very large and dark memory however and
2 that is how she lost him. We have since moved back from
3 Rome, back to Ireland in the hope of rebuilding our lives.

4 I had to change my daughter to a smaller school
5 because she felt too overwhelmed because all the other kids
6 had a daddy. She suffers from anxiety and depression. She
7 also fears that she will lose me too.

8 This is my second trip to the U.S. in two months
9 and each time I've had to take my children with me. They
10 are scared to fly but they are more afraid to be left behind
11 with the thought that they might never see me again.

12 But I had to make this journey so that I could be
13 here today to be heard and make a plea to the Court. The
14 secret sweetheart deal that was hatched between Boeing and
15 the Department of Justice is not justice.

16 I refuse to accept the DPA compensation money for
17 this reason. I do not want their blood money. I want the
18 truth, real justice, and accountability. I believe
19 Muilenburg and Calhoun should face a public trial and be
20 prosecuted for manslaughter.

21 These days, when I think of Mick's last day in the
22 world, I try not to think about his last moments on the
23 plane. Instead, I try to think of him on mission in the
24 field, doing what he loved doing best, but knowing his
25 thoughts were always with us.

1 A colleague of his whom he had worked with in the
2 field reached out to me after the crash. He wrote the
3 following: "A couple of weeks before the crash, Mick was in
4 Cox's Bazar in Bangladesh and we again made and planned more
5 things for the year with the agreement that we would keep
6 pushing for a bigger impact on refugees, no matter what.

7 "We parted our ways at the ISCG compound with me
8 saying, if you like it here so much, you should just stay.
9 We need you and you are always in the field already. Rome
10 is boring." I laughed.

11 And he replied, "I have family in Rome waiting. I
12 go back for them."

13 "I was so happy for him because there was so much
14 life, joy, and happiness in those words. We parted and that
15 hand in the air and smile as he walked away is the image I
16 retain of him."

17 I want justice for Mick and for all 346 people
18 that were killed by Boeing on those flights. Thank you.
19 Thank you, your Honor.

20 MR. CASSELL: Catherine Berthet.

21 THE COURT: Please raise your hand and be sworn.

22 THE COURTROOM DEPUTY: Ma'am, could you raise your
23 right hand to be sworn, please?

24 (The oath was administered.)

25 MS. BERTHET: Yes.

1 THE COURTROOM DEPUTY: Thank you, ma'am.

2 MS. BERTHET: Thank you.

3 May it please the Court. Your Honor, this young
4 woman's name is Camille. She was 28 years old when she lost
5 her life in the crash of Flight ET302 in Ethiopia. She is
6 my daughter.

7 She had been working in the humanitarian field for
8 several years, living in huge refugee camps. Always at the
9 same rhythm: Four months in Africa, and then 10 days of
10 vacation in France, at home.

11 Her last mission, which had just ended, was in
12 South Sudan, in the field which she loved, logistics officer
13 and area coordinator in a refugee camp. She managed budgets
14 of several millions dollars and managed nearly 100 staff,
15 South Sudanese, the expatriates of the mission being, for
16 the most part, assigned in the capital Juba.

17 How could I describe Camille? She was a
18 hurricane, had always been. She was exuberant, passionate,
19 committed, brilliant, and never giving up. She never gave
20 up.

21 To her friends, she regularly sent common mails,
22 which she entitled, "African Chronicles," in which she told
23 about her daily life. Everything was joyful and a source of
24 her amusement, even the poor food, the monsoon, and even the
25 discouragement which obviously pointed sometimes.

1 Her friends have put together these chronicles in
2 the form of a book, there were nearly a hundred of them.
3 The first memorial mass 15 days after the crash, coming from
4 all over the world. There were still nearly 50 of them to
5 attend her funeral six months later, 400 kilometers from my
6 home.

7 I had never seen the pain and tears in
8 30-years-old people. I saw their distress, their grief,
9 their suffering. I saw their reddened eyes, heard the sobs
10 they tried to suppress so as to not to add to my pain. I
11 read their poignant messages.

12 Today, they are my friends. They call me
13 Catherine or Mummy Camille. They keep supporting me by
14 reminding me, please, do act like Camille would. Don't give
15 up. Never give up.

16 Zack was a financial manager of the South Sudanese
17 mission in Juba. It was love at first sight. They had the
18 chance to experience a true love, immediately strong and
19 deep.

20 Certain that their love was eternal, they had so
21 many projects, going to Norway to observe the Northern
22 Lights, cycling to Santiago de Compostela, and so many
23 others.

24 They were going to live together in Kenya. They
25 wanted to get married, and they wanted children. I know

1 this because Camille mentioned the maternity leave clause in
2 her employment contract and because Zack mentioned the
3 triplets they were dreaming of at the first mass. They had
4 even found names for them.

5 It is to Zack that Camille sent her last message
6 from Addis Ababa, "I am boarding. I love you, kiss." I
7 cannot speak about Zack's suffering, it belongs to him, but
8 I know that he continues this path of faith on which they
9 had based a great part of their relationship, he Protestant,
10 she Catholic.

11 Actually, I was supposed to have dinner with him
12 last evening, but I had to cancel to go to Texas.

13 Camille was also an incredible sister. Knowing
14 that I was coming to testify today, my son Cesar insisted
15 that I present this picture. Camille was 12 years old when
16 Cesar was born. He never called her and still does not call
17 her anything but "Sweet Sister."

18 These two loved each other in a way that I have
19 never seen siblings love each other, in a fusion way. She
20 always wanted to do everything with him, show him
21 everything, explain everything, play, make him laugh, make
22 him discover the world, take him on weekends, but also
23 educate him, be severe sometimes, watch over him, care about
24 him.

25 Two years before the crash, Camille had decided to

1 get a tattoo. She asked her tattoo artist to invent a
2 pattern representing a three C's interlace for Camille,
3 Cesar, and Catherine.

4 I know because she told me, because, of course, I
5 saw it, that huge tattoo on her hip, but also because her
6 tattoo artist told me that when two years ago I went to meet
7 her to ask her for the same tattoo as my daughter's.

8 The first thing Cesar did on March 10th, 2019, was
9 upload all of his sister's photos to her social media
10 accounts. So he immediately took refuge in his room on that
11 big bed. This room and this bed have been their common
12 domain since Camille was working abroad.

13 He occupied it when she was away for several
14 months. He left it to her and went to sleep in the guest
15 room when she returned for a few days. There was never any
16 question of him going to sleep elsewhere. This room soothes
17 him.

18 He made a small altar on their common dresser,
19 which he enriched little by little with objects belonging to
20 his sister, with photos, which he goes to look for in her
21 belongings which I, myself, do not want to touch. At the
22 foot of his bed, a huge frame with numerous photos of his
23 sister, which he can see when he's lying down.

24 Since the crash, Cesar is not only my son, he's
25 also the one who protects me, who watches over me, who is

1 constantly worried about me.

2 So and what about me? Please, let me invite you
3 to figure out that you are me for the last -- for these past
4 almost four years. You are unhappy, 50-years-old woman,
5 about to graduate from your psychology degree, and within
6 two years, you will be a psychologist. Your children are
7 happy too.

8 You have a lover. You've only been together for
9 five months, but you've known each other for a few years,
10 and the love has suddenly become obvious. You don't live
11 together, but he has become part of your life, and your
12 children like him. He just spent the weekend with you.

13 On Saturday evening, March 9th, it is a ritual,
14 you accompany Camille to the airport, just the both of you.
15 It's one of those moments you cherish together. During the
16 trip she laughs at you. "Now, Mummy, you'll stop writing me
17 every time I have to take a plane. No more dangerous
18 flights. Now I take only serious commercial flights. Be
19 reassured."

20 She tells you that, as usual, she will write you
21 to say that she has arrived, but not before mid-afternoon
22 when she will be on site. She won't write at each transfer.
23 She has two transfers.

24 On Sunday morning your partner gets up early. As
25 usual, you sleep in until noon. When you wake up, your

1 phone is full of messages asking you to call back urgently.

2 Today you don't remember much about that day.

3 Just a picture on a computer screen and a few
4 words: Ethiopia crash. No survivors. You don't remember
5 either much of the following days, weeks, and months, just
6 flashes, moments.

7 Some things have changed in your life permanently
8 and very quickly, others little by little. You feel you
9 have nothing more to say, nothing more to talk about,
10 because it was your daughter you were talking to on a daily
11 basis, an uninterrupted dialogue for 28 years.

12 Wherever she was in the world, she would bombard
13 you with WhatsApp messages all day long and you would do the
14 same. The contents of her meal, her driver who had come up
15 with a nickname for her, her worries about you, requests for
16 recipes, gossips read on social networks, news of friends,
17 family, the little hurts of everyday life, with lots of
18 selfies of all the places on her body where an unknown
19 insect must have bitten her, reflections on your personal
20 loves, everything. The deafening silence overwhelms you.

21 And then it started. You could no longer take a
22 shower. It was impossible to undress and stand in this
23 large space in your bathroom. Since then, you have been
24 taking baths. The water surrounds you. You do not feel
25 assaulted.

1 Of course, you have to take a shower occasionally,
2 if the cabin is very narrow. This morning, for example.
3 You have had panic attacks, in cabs, in public transport.
4 You are afraid in train stations. You watch everywhere
5 because you are afraid of attacks. Needless to say flying
6 has become a nightmare.

7 Spending vacations or going to places that had
8 been special places with your daughter is no longer
9 possible. It took you one year to go back to the mall and
10 now you go with a list right into your store. You usually
11 do your shopping on the Internet.

12 You won't never finish Gray's Anatomy that you
13 used to comment on every episode together. You will never
14 watch Love Actually that she kept advising you to watch.

15 You can't listen to Celine Dion anymore,
16 remembering how you loved singing out loud together. You
17 can't stand to see any other pictures of her other than the
18 ones that are already all over the house. The new pictures
19 that her friends and relatives send you thinking that they
20 would please you are totally unbearable.

21 You spend days and days prostrate, without saying
22 or doing anything, in your sofa. But you still need to keep
23 your mind busy, so you compulsively do crossword puzzles, it
24 keeps you focused. Thus, today you have a crossword book
25 with you, just in case. Because you plan everything, no

1 room for the unexpected from now on.

2 Shortly after the crash you learn that your sister
3 is suffering from cancer, but she doesn't dare share her
4 suffering with you for fear of being indecent compared to
5 the loss you are experiencing and your 20 kilos loss.

6 Your mother has a heart attack. Your father is
7 diagnosed with cancer and collapses psychologically after
8 the crash.

9 And there is fog, loss of meaning, isolation,
10 helplessness, anger and fear. For the first two months you
11 don't open a newspaper or watch television. Nobody dares to
12 talk to you about the crash in front of you of what
13 happened. You don't want to know anything.

14 It is three months later in June that the father
15 of your son, your ex-husband, speaks to you, and that for
16 the first time you hear and begin to understand. Three
17 months later. The plane grounded, a crash four months
18 before, same plane, same cause.

19 It was not a normal accident, not a coincidence.
20 He himself has discussed it a lot with friends who are
21 aeronautical engineers. Boeing is responsible, it is
22 obvious.

23 You are French, where the culture of criminal
24 prosecution is very strong. The newspapers talk more about
25 trials and criminal cases than about civil cases, which

1 rarely make the headlines.

2 For you, logically, the two went hand in hand and,
3 from the beginning, like all the victims' families, you have
4 only one obsession: That justice be done and that those
5 responsible go to prison.

6 Your ex-husband tells you that, if there is one
7 country where judges are not afraid to put people in jail,
8 no matter how influential they are, it is the United States.

9 And it's true. We are in the middle of the MeToo
10 era and Weinstein was arrested and charged the year before.
11 So, in your mind, for the death of 346 people, there is
12 absolutely no doubt that Boeing executives will spend a few
13 years in jail.

14 It doesn't bother you that the process may take
15 years. In France, air crash investigations usually last ten
16 to 15 years. You have the time.

17 So the fog is gradually disappearing and you start
18 to investigate with anger rising, because you discover at
19 the same time as the whole world the turpitudes of Boeing,
20 the lies, a plane which, from the beginning, was based on a
21 flawed design, but moreover had a hidden software which was
22 activated on indication of one single sensor.

23 You discover that all this was known from the
24 first days following the crash in Indonesia, not only by
25 Boeing, of course, but also by everyone else. And it took a

1 second crash to ground it?

2 It sounds incomprehensible to you. For you, the
3 equation is simple, and you want to leave it at that. The
4 simple facts justify a trial and firm prison sentences for
5 those responsible for the crash.

6 But after a year, you understand during the COVID
7 crisis that it's not going to be that simple. There is
8 already talk of ungrounding the MAX. You have no news of a
9 possible investigation. So you start asking around. And
10 off you go.

11 You had never planned to understand the
12 functioning even of an airplane or the regulatory
13 institutions. You read articles and technical reports, the
14 JT610 reports, the ET302 interim report, you subscribe to
15 newsletters and set up alerts on social networks, interview
16 specialists. Understanding an airplane is not easy. The
17 acronyms are out there and everything is in English.

18 And you learn about the signing of the DPA through
19 a Twitter alert. So did just about every family of the
20 victims. Devastation. Incomprehension. This would never
21 have been possible in France.

22 You know this all the better today because you
23 have been in court every day this fall for the trial against
24 Air France and Airbus for manslaughter in the Rio Paris
25 plane crash. The decision has not yet been rendered.

1 And so, after the technical reports, you start
2 reading university textbooks on American criminal law --

3 THE COURT: Excuse me. How much more do you have?

4 MS. BERTHET: Sorry?

5 THE COURT: How much more do you have?

6 MS. BERTHET: That (indicating).

7 THE COURT: Okay. I will give you one more
8 minute. So wrap it up.

9 MS. BERTHET: Okay. Thank you.

10 And so, after the technical reports, you start
11 reading university textbooks on American criminal law to
12 understand what might have happened and how to change it
13 all. It can't end there, can it?

14 You are fortunate enough to get to know Professor
15 Cassell and you read every one of his motions. You delve
16 into the case law that he refers to in his motions.

17 You are also fighting because you know and have
18 every evidence that the 737 MAX is still unsafe. You read
19 the flight incident statistics reports. You are fighting so
20 that Congress does not validate the certification without a
21 modern crew alerting system.

22 God blessed you in this ordeal to have met
23 extraordinary people, families who are patient with your
24 questions, your poor English, and educate you.

25 In short, you have a full-time job. Your anger is

1 your driving force. Your son, your most fervent support.
2 Please go all the way. "Mum, Sweet Sister would never have
3 let go if one of us had been on that plane."

4 You realize you have become insensitive to the
5 pain of others, except for your family or the families of
6 the victims.

7 Besides, you can only talk to them about this. No
8 one in your family, your friends, or even the French
9 journalists understand anything about all of these
10 procedures.

11 The concept of spending one year and two hearings
12 in Texas to have the dead people in the plane recognized as
13 victims, and even then, only victims of lies. Nobody
14 understands it, but everyone supports you unconditionally.
15 They support you. We don't understand, but we know that
16 what you are doing is right.

17 You have not cried much since the crash. At the
18 funeral home, in the privacy of your daughter's casket, you
19 don't even know how many pieces are in it. Suddenly, during
20 your mother-in-law's funeral, when you felt nothing at all,
21 you had to leave the church because there was wailing,
22 screaming. You didn't know where it was coming from, and
23 you couldn't stop it. Your son came to comfort you.

24 You laugh, yes, but you are cold. You only feel
25 emotional closeness with other victims' families, even

1 though you don't know each other.

2 You left your partner more than a year ago because
3 his love became unbearable for you. You have nothing to
4 give. Your heart belongs to Camille and Cesar and there is
5 no room for anyone else.

6 Your psychologist mentions PTSD and you were
7 supposed to start EMDR tomorrow, but everything can wait.
8 You have your whole life.

9 Of course, Camille did not leave you a will. She
10 left you more, what you call her little parcels. The
11 belongings found at the crash site that could be identified.
12 You only opened them in September of 2021. You were not
13 ready before.

14 THE COURT: Okay.

15 MS. BERTHET: No. Just let me end --

16 THE COURT: No. That's okay.

17 MS. BERTHET: Please, your Honor.

18 THE COURT: Thank you.

19 Mr. Cassell, let's have --

20 MS. BERTHET: I would just --

21 THE COURT: No, I've heard you. Thank you, ma'am.

22 MS. BERTHET: Just one sentence. Please --
23 please, your Honor.

24 THE COURT: Please, ma'am, step on back.

25 Mr. Cassell, call the next witness.

1 MR. CASSELL: Your Honor, I take it the entirety
2 of her statement could be entered into the record in
3 writing?

4 THE COURT: Yes.

5 MR. CASSELL: Yes. Thank you, your Honor.

6 Naheed --

7 MS. BERTHET: Thank you. Thank you, your Honor.

8 THE COURT: Yes. Uh-huh.

9 THE COURT REPORTER: Mr. Cassell, will you say his
10 last name again, please?

11 MR. CASSELL: Yes. Naheed Noormohamed. It's on
12 our list.

13 THE COURT REPORTER: Thank you.

14 THE COURT: Please raise your hand and be sworn.

15 (The oath was administered.)

16 MR. NOORMOHAMED: I do.

17 THE COURTROOM DEPUTY: Thank you, sir.

18 THE COURT: Okay. Just a few minutes.

19 MR. NOORMOHAMED: Sure.

20 My name is Naheed Noormohamed. I'm here to
21 represent my father, Ameen Noormohamed. If you will permit
22 me, I just want to read off this.

23 So on March 10, 2019, the world was changed
24 forever for our family when my father, compassionate brother
25 and uncle, a loyal friend, a loving husband, and a devoted

1 father, and a new grandfather tragically lost his life in
2 the ET302 plane crash.

3 He left behind his two children, a granddaughter,
4 and the biggest victim of his passing, his wife, all of whom
5 loved and cherished him deeply and felt the devastation of
6 his loss immensely.

7 At 78 years old, and after being together for
8 almost 50 years, the loss of my father has left a gaping
9 hole in my mother's life. She has lost a big piece of her
10 identity and is no longer the same person she was before the
11 crash. We do not know our mother without our father, but
12 even more than that is because she no longer knows herself.

13 Even today, almost four years later, it feels like
14 the crash happened only yesterday. The emotional toll on
15 her has been immense and it is heartbreaking to see her
16 struggling to come to terms with the loss of her lifelong
17 partner.

18 And the constant legal battles and lack of
19 accountability from those responsible only serve to prolong
20 our pain and suffering. My father was more than just a
21 father, husband, and grandfather, he was a legend.

22 He was truly a wise man who lived his life with
23 purpose, always striving to help others and make a positive
24 impact on the world. He had high morals, was recognized as
25 a contributing member of society. He was kind and generous

1 of both time and resources.

2 He was devoted to his family and exposed us to a
3 world which allowed us to be the global citizens that we are
4 today. He guided us in striving to become the best version
5 of ourselves every time and to keep the flame of our inner
6 child alive.

7 He was a hard worker, known for his compassion and
8 kindness towards everyone he came across. He was also an
9 advocate for education and not just for his own children but
10 for others as well.

11 He was respected and admired by many and his loss
12 has left a hole in the hearts of all who knew him. Above
13 all, my father was a man of unwavering moral values. He
14 lived his life guided by a strong sense of right and wrong
15 and always sought to do what was right, just, and fair.

16 He emphasized the importance of taking
17 responsibility for our actions and taught us to always
18 consider the consequences of our choices. He instilled in
19 us a deep sense of empathy and compassion and encouraged us
20 to help others whenever we could.

21 The most heartbreaking part of this tragedy is the
22 fact that we have had to fight for justice from the very
23 people we rely on to protect us, the Department of Justice,
24 who we hear about across every border as being the most just
25 and having the highest standards, has failed us by allowing

1 Boeing to get away with murder.

2 This is not just a failure of justice. It's a
3 failure of humanity. We are here today not to just seek
4 justice for my father and other victims, but to ensure that
5 their deaths were not in vain.

6 We are here to make sure that the people
7 responsible are held accountable and the families of the
8 victims can finally have some peace. We are here to make
9 sure that our fathers, brothers, sisters, husbands, wives
10 and everyone else that didn't need to die's legacy will not
11 be forgotten.

12 We are here to make sure that history will
13 remember the victims of the crashes. Sorry. We are here to
14 remember the history, remember the victims of the crashes as
15 not just victims of a tragic event, but victims of greed and
16 the lack of best practice.

17 We ask you, your Honor, to do the right and just
18 thing, to hold those responsible accountable, and to give
19 the families of the victims the peace they deserve.

20 We ask you to make sure that the legacy of all the
21 victims will not be forgotten. We ask you to make sure that
22 our quest for justice was not in vain. Thank you.

23 THE COURT: Thank you.

24 MR. CASSELL: Zipporah Kuria.

25 THE COURT: Ma'am, would you raise your hand to be

1 sworn, please?

2 (The oath was administered.)

3 MS. KURIA: I do.

4 THE COURTROOM DEPUTY: Thank you.

5 MS. KURIA: Hello, your Honor. My name is
6 Zipporah Kuria, and I've come from London. I'm here to
7 briefly speak about my dad, Joseph Kuria Waithaka.

8 My father raised us in living a life that you
9 don't have to speak about who you are, but the fruits of
10 your heart will be experienced by the people that you are.

11 So I'm just going to read something very short, a
12 line or two, a friend of mine wrote. And he said, "Joseph
13 treated me like one of his sons. Handed me the keys to his
14 household after my mum died and my family moved away. I was
15 a groomsman at both of his sons' weddings, and his daughter
16 is undoubtedly one of the biggest inspirations in my life.
17 I have a lot to thank Mr. Kuria for."

18 Not a lot of parents would take in a child's
19 friend after the passing of a parent to make sure that life
20 isn't disturbed too much, but my dad's kindness went beyond
21 most.

22 One of my favorite memories of my father is the
23 first family holiday that I remember. My mum and my
24 brothers tried everything to get me into the water, but I
25 was too afraid. Dad jumped in the water and pretended that

1 he was drowning. He said nobody but his little girl could
2 save him.

3 The truth of the matter is he made me believe that
4 the strength of my six-year-old tiny body could carry him
5 out of the ocean. And that goes to show the power that he
6 had as a father, as a friend, as an uncle, and as a person
7 who endeavored to see those who were overlooked in society,
8 from the homeless man in the city center to any perfect
9 stranger in the room, he captured the humanity of everyone
10 he encountered. He could tell you their story, their
11 dreams, and their struggle as much as time had afforded him
12 to glean.

13 Life is full of speakers and people that want to
14 be seen, but in the quest for this life -- my father's
15 biggest quest in this life, sorry, was to see those around
16 him and to listen where he could.

17 To me, Joseph Waithaka Kuria was more than just a
18 father, he was the referee in my corner, the coach in my
19 ear, and the confidant in my heart. We know our parents are
20 meant to journey our whole lives -- sorry. Let me just take
21 a breath.

22 We know our parents are not meant to journey our
23 whole lives with us, but dad was wrenched from us too soon.
24 My sisters were barely three and eight. They don't get to
25 see him at school recitals or graduations. He doesn't get

1 to walk me or them down the aisle. Life has become
2 bittersweet.

3 Everything that should bring joy in our lives is
4 tainted with sadness and grief. From Christmases to New
5 Year's celebrations because of the dad-shaped hole in our
6 lives. He is not on the phone to tell him that you got the
7 job or that you passed the exam or just to say I love you.
8 And that's the last thing that he said to me. "I love you"
9 over and over.

10 Parents are the pillars on which our lives are
11 built, but now my family lives a fractured life. I asked my
12 sisters now, you know, just a little over seven and 11, and
13 I asked them, what would be the perfect gift? One of them
14 said for daddy to come back and the other one said for
15 planes to have never been made.

16 To quote the last four years of our life as
17 traumatic would be an understatement. They say that you
18 start grieving when we bury our loved ones. Three funerals
19 for one man, but we still didn't bury all of him.

20 My dad died in March 2019 we had a funeral with no
21 coffin. In October 2019, I walked into a makeshift chapel
22 in Ethiopia in a cargo bay to find a man that I had last
23 seen happy, healthy, and whole, but the next thing I saw was
24 a coffin with his name on it.

25 The coffin was then opened to us for me to see

1 seven full-sized parcels of what was supposed to be the man
2 that had raised me. I couldn't for the life of me figure
3 out where the hands that carried me countless times, the
4 shoulders I rested on my whole life, and the face that has
5 always been the semblance of safety and hope was.

6 30 percent of my dad and an index card indicating
7 and outlining what the seven fist-sized parcels were
8 supposed to be of the man that raised me.

9 The hardest thing about it all was walking out of
10 that room and seeing countless faces who were about to
11 encounter the same fate.

12 I remember sitting on a plane knowing that my dad
13 and 32 other incredible souls were in the boot of a plane
14 journeying -- completing a journey that had started six
15 months prior.

16 Watching husbands, mothers, and fathers search for
17 their wives and children in the seas of coffins at an
18 airport like they were collecting luggage. Often I wish
19 that I had lost my dad in his sleep or maybe he had been
20 taken by illness, because missing him would come without the
21 cost of the torment of night terrors of him falling out of
22 the sky, screaming my name and me not being able to do
23 anything about it, or wondering whether the body bags that I
24 was seeing on Sky News and CNN, which one of those would
25 then carry the body of my father?

1 The lives that were lost and destroyed were not
2 just the 157 lives on that plane or the 346 lives in total.
3 It was the tens, hundreds or thousands of lives attached to
4 each and every individual. I lost my dad shortly after I
5 turned 23. I stand here now shortly just after turning 27,
6 and I can tell you that I don't know what the last three
7 years or four years of my life have brought.

8 My friends are growing up. They're getting
9 married. They're building careers, buying houses and even
10 having children, but I have nothing to show but heartbreak
11 and sadness and grief from the last four years of my life.
12 It has been an unending loop. It has been an unending loop.

13 I have missed going out to clubs or doing whatever
14 it is that 23 to 27-years-olds do. I've been catching
15 flights and planes, coming to America, going to Ethiopia,
16 going to Europe, trying to be seen, to be heard, but not
17 even a single letter of condolence has come from Boeing.
18 Nothing but news statements to remain relevant in the media
19 and to look like they're doing the right thing.

20 And the saddest thing of all of this is finding
21 out that the awakening hellish nightmare that has become our
22 lives wasn't an honest mistake. It wasn't genuine
23 negligence. It wasn't an oversight, but it was a
24 combination of calculated risks, decisions made again and
25 again by suits in a board room that decided that human life,

1 my dad's life, and the lives of those left behind was
2 collateral -- was enough to be collateral damage and was
3 inevitably expendable.

4 That they decided it was okay for them to continue
5 to line their pockets with wealth while we continue to line
6 graves with our loved ones. There is no remorse in this for
7 Boeing, but how can there be when they've gotten away
8 without being held accountable at each and every turn in the
9 last four years?

10 Like a child without restraint who knows that
11 their parents' purse strings extend further than any
12 consequence or further than justice could ever prevail, 346
13 lives and countless others have been destroyed.

14 Muilenburg, the CEO at the time of Boeing was born
15 the same year as my dad. He walked away with \$80 million,
16 and my dad paid for it with his life.

17 It's bewildering and disconcerting that we're here
18 to hear a case about fraud and deceit and lies, but not a
19 word about the 446 [sic] lives that were lost. It's not a
20 manslaughter or murder case; 346 lives gone, and countless
21 others destroyed.

22 The consequence of that is a fine and an immunity
23 deal for those responsible. How can we believe in justice
24 if this has been categorized as sufficient justice for us?

25 How do we continue believing in humanity if human

1 life can slip away from us, but the ability to have the
2 capital to pay for the responsibility is left unchecked.

3 I was on a plane, the first six minutes of every
4 journey, I sit and I wonder and I think and I conjure in my
5 mind what my father, the nine-month-old child that was on
6 that plane, the mothers that had to hold their children and
7 try and convince them everything was okay, I sit there and I
8 contemplate it, and I see it every six minutes of every
9 flight.

10 And it's interesting that when you see these
11 things happen and you see the tweets and people say,
12 "Condolences and prayers," we think that we are untouchable.

13 In October, when the first plane went down, I
14 tweeted condolences for the loved ones of those who had
15 perished in the crash of Lion Air.

16 Five months later, I was the one on the other end
17 of those tweets and prayers and the public being outraged
18 and saddened by our loss, and it could be anyone because
19 those planes are still unsafe.

20 But I won't take too much more time. Nothing can
21 bring our loved ones back and no penalty feels sufficient
22 for the needless loss of this life and the trauma it has
23 left, but history only continues to repeat itself when we
24 fail to learn from it.

25 I hope that this is a moment, a turning point for

1 us to learn from history despite the fact that Boeing have
2 continued to fail to do so at each point that they've been
3 presented, and to ask for them to be held accountable, the
4 DPA, a sweetheart deal, a fine, and immunity for the lives
5 of 346 people. I ask, if that's where we leave it, how do
6 we continue to believe in justice?

7 Thank you for your time.

8 MR. CASSELL: Ike and Susan Riffel.

9 THE COURT: Would you raise your hand to be sworn,
10 please?

11 (The oath was administered to both Mr. and Mrs.
12 Riffel.)

13 MS. RIFFEL: I do.

14 MR. RIFFEL: I do.

15 THE COURTROOM DEPUTY: Thank you both.

16 MS. RIFFEL: Thank you, Judge O'Connor, for
17 listening to us today. My husband and I, I am Susan Riffel,
18 and we lost our only two children when the flight went down,
19 ET302.

20 Our sons were extremely independent. They were
21 traveling together prior to our older son having his first
22 child. So he had gone on a trip with his wife, and then
23 extended the trip with his brother to "see the world."

24 The last time I spoke with them, they were on a
25 rooftop in Jerusalem, looking out and just saying hello.

1 And then, the last email I got was they were leaving
2 Thailand and they were excited about just the rest of their
3 trip and coming home and telling us all about it and sharing
4 their stories. So that's my last verbal and written from
5 our sons.

6 They were very independent. They were both
7 successful in their chosen careers and had bright futures.
8 They loved many things, many activities. Bennett especially
9 loved the reading. Melvin was very active. So they lived a
10 good life. They had many friends.

11 They loved to debate each other, their dad. I
12 sort of stayed out of that, but they were -- we were a close
13 family and we were blessed. They cherished family at all
14 levels, grandparents, cousins; family was very important to
15 them.

16 I would say they were very typical young men as
17 far as Americans go. A lot of people after the crash said,
18 oh, were they going over to do humanitarian? Um, no, they
19 were going to play. So they were kind of typical in that
20 respect.

21 When asked what impact this has had on my life, on
22 our life, I can cry at any moment, for any reason. I could
23 see someone walking down the street and say, oh, that looks
24 like Melvin or, oh, that could have been Bennett.

25 I turned around once in my car on my way to work

1 after about a year, because there was a van coming the other
2 way. I thought, it didn't happen. Bennett is in that van.
3 He's coming to the house. I'd better get back there.

4 So life changed drastically. I wake up in the
5 night and I can be thinking about the boys and start to cry.
6 That's just probably life as I know it.

7 I have a hard time making commitments now as far
8 as with friends, and, oh, do you want to go do this or go do
9 that? Yeah, I guess so, but maybe I won't be here. I don't
10 say that, but that's how I feel. Like making a commitment
11 like that, that was easy before, let's go, let's get
12 together, that part has really changed.

13 Now that we're retired, we just recently retired,
14 and our retirement looks very different than what we thought
15 it was going to be. We thought we were going to be sharing
16 that retirement with our boys, with our family.

17 We like to travel together with them. We like to
18 plan trips and just simply sharing life. And what's gone
19 now as far as retirement goes are all those family-isms.
20 Like things that just your family knows, like the four of
21 us, things growing up with them, things that you will refer
22 to, or remember that or remember this, or just little
23 sayings the four of us would really get. All of that is
24 just totally gone and it feels empty and cold. So that's
25 just part of our life.

1 Now, I see our granddaughter is being raised by
2 our amazing daughter-in-law, but she's raising her alone
3 because she delivered our granddaughter in May. Of course,
4 our granddaughter's father left this planet in March. So
5 she's never going to know her daddy. She's never going to
6 know her uncle, that side of her family, other than what
7 grandpa and granny can share.

8 I remember with Ike, when Emma was first born, he
9 had a hard time for the longest time to even hold her,
10 because he would cry, and say, it wasn't right that he's
11 holding her. His son should be holding his daughter. And
12 that was a tough thing for me to witness and for him
13 obviously to feel.

14 I remember Brittney when she decided it was time
15 to move into another home and not stay in the home that she
16 had shared with Melvin. She sat there in her home one
17 morning and just said, I should be excited. You know, I'm
18 moving into this new home. We're starting a new chapter.
19 And she goes, and I'm not because I'm not sharing it with
20 her husband, with Emma's dad.

21 Nothing is really the same anymore. It's the
22 things that used to matter, just kind of don't, even though
23 I want them to. I feel like we kind of walk through the
24 motions of life and just kind of get through each day.

25 We always taught our children consequences. Ike,

1 especially, as their father, was very big on consequences.
2 Life teaches its own lessons. And, you know, if someone
3 throws a punch your way, keep punching, keep fighting back.
4 I think that's one of the reasons that we're here today is
5 because of the consequences of what's happened.

6 I would like to ask representatives from Boeing
7 and the DOJ to just close your eyes for a moment. Take a
8 deep breath and with your eyes closed visualize special
9 times, birthdays of loved ones, maybe of your children,
10 Mother's Day, Father's Day, Christmas, all those special
11 occasions.

12 For me, when I think of those and when I wake up
13 on those special days, I might stretch, but then right away
14 the reality of, I'm not going to share those with our sons.
15 They're not here. They're not going to bounce through the
16 door. They're not going to call or text or call the next
17 day and go, oh, sorry, mom. I forgot. Okay.

18 I'm never going to have that again because, in my
19 view, criminals at Boeing allowed that to happen. They
20 killed our sons. And that's a consequence that I personally
21 think someone should be accountable for.

22 Ike.

23 MR. RIFFEL: Yeah. Thank you. I thank the Court,
24 Judge O'Connor, for giving us this opportunity today to
25 speak.

1 My name is Ike Riffel, father of Melvin and
2 Bennett Riffel, both victims of ET302. First, I would like
3 to say that my wife, Susan, and I were blessed to have these
4 boys in our life. We thank God every day for the time we
5 had with them, Bennett for 26 years and Melvin for 29 years.

6 I think about them every morning, every day, every
7 night. I also live every day with the nightmare of the
8 crash that took their lives.

9 I am here today because my sons and 344 other
10 innocent souls lost their lives because criminals at Boeing,
11 motivated by greed, conspired to deceive and defraud the
12 FAA. This fraud and deceit was found to be directly
13 responsible for the traumatic crashes.

14 I believe, had Boeing come clean and not deceived
15 the FAA and even their own people, we would not be having
16 this conversation today.

17 Before I ever heard of the DPA, I believed that
18 the FBI, the DOJ were conducting a thorough investigation
19 and any wrongdoing of both Boeing and on behalf of the FAA,
20 I thought with any criminal investigation, if any criminal
21 behavior was detected and laws were broken, there would be
22 indictments and due process would follow.

23 The family of the general public would be allowed
24 to watch and participate with full transparency. The
25 corporation would be put on notice that they are not above

1 the law. That's the way I thought it would be.

2 And then, out of nowhere comes the Boeing DPA. I
3 was in shock; this can't be true. A secret backroom deal
4 with the DOJ and Boeing essentially ended the investigation
5 and grants immunity to Boeing executives? What a slap in
6 the face.

7 One of the things that bothers me a lot about
8 this -- this agreement, behind this DPA hides the truth.
9 The truth that the families of the flying public have a
10 right to know.

11 The truth could help us understand how this
12 happened and help make sure it never happens again. We were
13 denied our rights by this backroom deal.

14 Whatever happened to equal protection under the
15 law? If by speeding across town I lost control of my car
16 and jumped up on the sidewalk killing an innocent person,
17 would a DPA be there, available to me? Probably not.

18 I guess if you work for a major corporation and
19 your recklessness results in the death of 346 people, that
20 moves you to a different tier of justice.

21 The deal stinks on all levels. The bottom line is
22 motivated by greed and profit. Boeing knowingly pushed an
23 unsafe airplane through certification, and then they gambled
24 with the lives of their passengers.

25 Our sons lost big, 344 other people lost big,

1 families and friends lost big. Boeing, it turned out, got a
2 sweetheart deal. Where is the justice?

3 Shame on you, DOJ. You did nothing to improve air
4 transport safety. Instead, you made us less safe by
5 empowering the criminals. DOJ, please step over to the side
6 of justice and help us weed these criminals out.

7 I will never see my boys again, but we can stop
8 them from killing somebody else's family.

9 MS. RIFFEL: Thank you.

10 MR. RIFFEL: Thank you.

11 THE COURT: Thank you.

12 MR. CASSELL: Brittney Riffel.

13 THE COURT: All right, ma'am. Would you raise
14 your hand and be sworn, please?

15 (The oath was administered.)

16 MS. BRITTNEY RIFFEL: I do.

17 THE COURTROOM DEPUTY: Thank you, ma'am.

18 MS. BRITTNEY RIFFEL: This is Emma Riffel, and I'm
19 Brittney Riffel. I'm the spouse of Melvin Riffel and
20 sister-in-law to Bennett Riffel.

21 Say, hi, my name is Emma.

22 EMMA RIFFEL: Hi, my name is Emma.

23 MS. BRITTNEY RIFFEL: All right. So again, my
24 name is Brittney Riffel. I'm spouse to Melvin Riffel,
25 sister-in-law to Bennett Riffel, who were both killed in the

1 ET302 plane crash on March 10, 2019.

2 Sitting up here today choosing to make an impact
3 statement almost seems impossible as words are not enough to
4 express the impact my husband's death and the ET302 plane
5 crash, in general, have left upon my and my daughter's life.

6 I'm completely and utterly lost without my husband
7 here. Our lives were just beginning. We were starting a
8 little family together and everything was perfect, until it
9 just wasn't.

10 I was seven months pregnant when Mel's life was
11 ripped away from this earth. I say ripped away because
12 literally in an instant he was ripped out of my life.
13 Ripped out of our future plans. Ripped away from becoming a
14 dad and ripped away from the impact he would have made on
15 this world with each person he encountered and, most
16 importantly, the impact he would have made in his daughter's
17 life.

18 Melvin never had a chance to meet his daughter and
19 Emma will never know how it is to have a dad in her life.
20 She doesn't get to see the love and affection exchanged
21 between her parents. She doesn't get to have those hard
22 talks about all those boys. She doesn't get to feel
23 fiercely protected by her dad.

24 She doesn't ever get to have her dad take her to a
25 father-daughter dance and never have her dad walk her down

1 the aisle. Emma is only three years old, and she has
2 already had so much taken from her.

3 Melvin was such a force to be reckoned with. He
4 was energetic, motivated, fearless, confident, and outgoing,
5 all the while he was down to earth, caring, compassionate,
6 and a great listener.

7 If Melvin had the chance to be here all of those
8 qualities would be instilled in her to the fullest. Now
9 it's all on my shoulders. It is up to this grieving mother
10 to tirelessly explain to her who her daddy was, his
11 personality and traits and making sure she knows how much he
12 loves her and making sure I tell her stories about our love
13 and all the things that he had planned for us as a family.

14 I'm a single mother now and fighting for life, my
15 life, to make sure that I shine just for her. All of that
16 while dealing with the lawsuits and fighting for justice
17 that should have been -- that we should have had a long time
18 ago.

19 Our lives haven't just been impacted, they were
20 shattered into a million pieces and left to dust. I'm not
21 even the same person anymore. That happy, loving, fun and
22 cheerful self has completely disappeared. I had to pick
23 myself up off the ground and learn how to survive for our
24 daughter.

25 Learn how to be a parent on my own. Making sure

1 that I have all these decisions down to a T on my own, live
2 without the comfort of having someone by my side to protect
3 us, and living without personal companionship to share my
4 life with.

5 Every day I live lonely and every day I yearn for
6 my husband and every day pray to God he can hear me when I
7 talk to him and I pray to God he is resting in peace with no
8 recollection of the suffering and torture he was put through
9 upon his death.

10 I can't imagine even sharing my life with anyone
11 else. I tell people I will be just fine, but I honestly
12 don't know if I will be. Emma is a blessing and gives me
13 such life and happiness, but that doesn't change the fact
14 that this is still a nightmare of a life to live.

15 I have been in constant therapy coming up on four
16 years. I never feel like I'm in a state of happiness. I
17 have social anxiety, along with constant thoughts that
18 something is wrong or is going to go wrong. My
19 relationships and friendships suffer because I don't have
20 the energy to put into them.

21 We are coming on four years of fighting for
22 justice for our loved ones, with the constant emails and
23 information gathering and interviews and court cases and
24 hearings and horrifying and gruesome details of the
25 investigation, I'm just emotionally and mentally exhausted.

1 The person I loved the most in this world is gone,
2 when, in fact, he could still be here if Boeing hadn't
3 played Russian Roulette with our lives.

4 It's plain and simple. Boeing had intentionally
5 put a faulty software system inside their planes and gambled
6 our lives away all for the competition, all for the money,
7 and all due to greed and selfish acts. It could have been
8 anyone's family. It could have been your family. It could
9 have been your family.

10 We're here in this courtroom today fighting for
11 justice to be done. Fighting to not let this nightmare
12 happen to anyone. Fighting for the safety of our lives in
13 the air. There is more than enough proof showing the
14 criminal behaviors of Boeing, and they were granted immunity
15 for killing 346 people.

16 Please let justice be served so we can make the
17 world a safer place for our brothers, our sisters, and our
18 children. Thank you for listening to me.

19 MR. CASSELL: Paul Njoroge.

20 THE COURT: Would you raise your hand and be
21 sworn, please?

22 (The oath was administered.)

23 MR. NJOROGHE: Yes, I do.

24 THE COURTROOM DEPUTY: Thank you, sir.

25 MR. NJOROGHE: Thank you, Judge O'Connor, for

1 allowing me this opportunity to speak today. My name is
2 Paul Njoroge. I'm the husband of Caroline Karanja, father
3 of Ryan Njuguna, Kellie Pauls, and Rubi Pauls, and
4 son-in-law of Anne Karanja, who all died when that plane,
5 highjacked by MCAS, plummeted into the ground in Ethiopia.

6 That plane plummeted into the ground at a speed
7 close to the speed of sound, burying my entire family
8 30 feet deep into that dirt in Ethiopia. Nothing was left
9 of my entire family. Nothing was left of the other victims.
10 Nothing actually, of the entire aircraft.

11 In fact, I only got 50 pounds, 50 pounds of my
12 family, 50 pounds of my entire family. That haunts me every
13 day.

14 I have nightmares about the six minutes of terror
15 that my wife and my children endured. What happened within
16 those six minutes is not something that the DOJ here, that
17 Boeing actually think about. It's something that haunts me
18 every day of my life.

19 I'm going to talk about and I'm going to tell you
20 the story of my beautiful family. It can take the entire
21 day, but I will just make it short. Caroline was 33 when
22 she died, Ryan was six, Kellie was four, Rubi was nine
23 months, my mum-in-law was 61 years old.

24 My wife grew up in a small village in Nakuru,
25 Kenya. She grew up in an era where most young girls in her

1 community were not pursuing higher education. Most of them
2 would end up married young or forced into early marriages,
3 and that would lead to a cycle of unending poverty in that
4 small community.

5 Carol became an outlier. She pursued elementary
6 school, high school, and then joined the university. In
7 fact, my wife was the first girl to ever score an A in
8 Kenya's high school national examination for the year 2003.

9 She joined the University of Nairobi in Kenya to
10 pursue a finance degree. That's where she found me. When
11 she joined the university, I was a second-year student. And
12 the first year we met, we met at the school -- at the
13 university's hall of residences.

14 And, you know, we got to speak that day and I got
15 to know where she came from. She only grew up a few miles
16 north of where I grew up, and that's what bonded us. It was
17 love at first sight.

18 Carol motivated a lot of young teenage girls in
19 her community to pursue higher education. And as a matter
20 of fact, there has been significant increases in university
21 admissions for girls in that community.

22 Carol and I became best friends and then boyfriend
23 and girlfriend and then became sweethearts, as my friends
24 and our friends would call us -- would call it. And
25 eventually I graduated from university and joined

1 PriceWaterhouse Coopers in Kenya.

2 The year after Carol graduated as well and she
3 became an accountant in a chemical processing firm in Kenya.
4 A couple years later, I proposed to her, and we started
5 planning the wedding.

6 In the course of planning the wedding we got
7 pregnant. She got pregnant. And around that time, I had
8 received an offer to work as an investment analyst here in
9 North America.

10 So in 2012, Ryan was born. Right then I was
11 working in Bermuda. That's where we were living. He grew
12 up as a smart boy. I actually thought he was smarter than
13 kids of his age.

14 When he was about one and a half years, I was
15 studying for an exam, it's called the Chartered Financial
16 Analyst designation for investment professionals. I would
17 wake up at 3 a.m. to study because I was working full time
18 and every day he would -- every day Ryan would shoot up --
19 would shoot out from the bed and run to the living room
20 where I had a desk -- a study desk, and he would come and
21 ask me, "Oh, Daddy, why you always reading that book? You
22 wake up to always read that book? Should I be doing that as
23 well? Should I be reading my stories every day?"

24 And if he found me not reading the book then he
25 would ask me, "Why you not reading today? Why you not

1 reading that book that you always reading?"

2 There's a lot of memories that I have about my
3 family. Memories that I can speak to you about. It gets
4 emotional -- too emotional.

5 Ryan would then pull me, just use all his
6 strength, and then he try to pull me to the kitchen so that
7 I can give him a bowl of Cheerios and milk.

8 See, these victims, this word "victims" that
9 Boeing and the DOJ uses, these people you call victims,
10 they're human beings. They're human beings who live in me.
11 My wife and children live in me.

12 And today I just struggle to live so that I can be
13 their voice, because nobody would ever speak about my
14 family, ever, if I was not here.

15 So Kellie was born in Boston, Massachusetts in
16 2014, and she was a doll. She was the princess of the
17 family. She always wanted us to call her Princess.
18 Actually, when Rubi was born in 2018, Kellie told me, "You
19 know what, this girl will be Princess No. 2. She cannot be
20 Princess, just Princess. She has to be Princess No. 2."

21 Kellie was a singer and dancer, and she would sing
22 for us, dance for us, make us laugh. She would sing to
23 Rubi, try to make Rubi excited, make her happy.

24 And Rubi, even though she was nine months old, you
25 know, whenever she heard my voice, she would just turn

1 around -- she would just try to turn around and then lift
2 her hands up so I can pick her up.

3 So I'm left with memories. A lot of memories of
4 my wife, memories of my children. You know, memories about
5 their birthdays, our anniversary, their special days, and
6 holidays. You know, these are not things that I will ever
7 get to see. I will never get to see my children join the
8 university, get married, have families.

9 I will never get to know what my children would
10 have become. You know, I always wonder -- my wife and I
11 would talk about that, and she always wonder, who's going to
12 become a numbers guy? Who's going to be like her dad?
13 Who's going to be an investment professional?

14 Who's going to be a pro soccer player? A pro
15 basketballer? A pro footballer? Who's it going to be? You
16 know, I could have known if my children were here. I could
17 have known that, but now I can't. You know, I'm just left
18 to speculate and to think about every day.

19 Whenever I see families with their children out
20 there, whenever I see them walking in a park, then I have --
21 it's always a constant reminder of my family, of how my life
22 is fractured.

23 So I want to be with them because I want to hold
24 them. But I end up crying every day. You know, I end up
25 weeping. There are many times that I feel so hopeless. You

1 know, that feeling of your life teetering at the edge.

2 You know, it's something that you've never known.

3 You've never known that. You know, that feeling of

4 hopelessness. You are so lonely in a world of 8,000,000,000

5 people.

6 To you all, and to DOJ, to Boeing here, March 10

7 is almost four years ago, it seems like yesterday to me

8 because my mind was left there. There is this constant

9 nagging thought of what happened on that day. Six minutes.

10 The imagination of that plane, nosediving at

11 almost 90 degrees, impacting the ground like a bomb and

12 leaving a crater 30 feet deep. It just never leaves my

13 mind. It can't.

14 Have you ever paused to think about that? Have

15 you?

16 Did you imagine that when you were coming up with

17 this deal? Did you? No.

18 I haven't slept. Since March 10, 2019, I haven't

19 slept a night without waking up, without my heart racing,

20 with my heart racing, my body sweaty, that feeling of

21 pressure in my chest, and the nagging tightening of my

22 throat, that mild suffocation, that mild breathing anomaly

23 that I always have.

24 I must use pills to have four hours of

25 uninterrupted sleep. I must cool frequent headaches with

1 painkillers. I always use medicine to lower the escalating
2 stomach acidity problem that I have. They call it ulcers.
3 That's what doctors call it.

4 You know, the simple statement is that my life was
5 simply snatched away when my wife and children died. My
6 life got buried 30 feet deep in that crater that that Boeing
7 737 MAX created.

8 And today I try to read, I try to run, I try to
9 meditate, I try to travel, to watch all sports, you know,
10 play sports, just try to do anything that keeps me going.

11 It's not easy when everybody refers to you as that
12 guy who lost his entire family and he's still living, like
13 his family was supposed to live. I'm going to live to tell
14 the story of my wife and children, to be their voice.

15 Boeing's culpability in the death of my wife and
16 children, my mum-in-law and all other victims, is
17 well-documented. Boeing and its senior executives put
18 profits over people.

19 Now, before the crash of Lion Air, Flight JT610,
20 they perpetrated fraud by concealing information from the
21 FAA regarding MCAS and the magnitude of its effect when
22 activated.

23 After the crash of JT610, the then most senior
24 executive of Boeing, ex-CEO Dennis Muilenburg, provided
25 assurances to the public that the plane was safe to fly.

1 His usual demeanor was to blame the so-called foreign
2 pilots. He continued to use that fallacy over and over.

3 He did this knowing that there was already an MCAS
4 internal safety review that was going on within Boeing and
5 even the FAA was doing. He never disclosed that to the
6 public, because if he did, I could have known. I'm an
7 investment professional. I could have known that.

8 Do you know what happens when an impartial
9 institution is given a duty to protect the public? They do
10 conduct a thorough fact-finding exercise. They demand
11 corporations to submit documents to them and they comb
12 through those documents over and over, one by one, to make
13 sure that they don't miss anything.

14 The DOJ yet did not do any of that. Instead, what
15 you did, you never asked for any documents, did you? No,
16 never.

17 This data-finding process is what they
18 disseminated. They did that for the benefit of investors.
19 You had a duty for the benefit of the public.

20 Now how then can DOJ claim that fraud was not
21 contagious within Boeing?

22 How can you claim that Dennis Muilenburg was not
23 culpable? He was at the helm of the decision-making. The
24 buck stop with him.

25 The lack of proper oversight, the sheer arrogance

1 and complete disregard of human life was contagious within
2 Boeing and that contagion effect has spread to some key U.S.
3 government departments, the DOJ being one of them.

4 You're in bed with Boeing. Your complacency is
5 too apparent. It's a shame that this is the DOJ, in this
6 land of the free and home of the brave. Show me your
7 bravery. Show us your bravery.

8 Dennis Muilenburg and other executives took a gun,
9 a gun loaded with killer bullets, and just like children
10 playing in a bush, playfully shot in the air countless
11 times, and even though the bullets took long, winding paths,
12 four of those bullets annihilated my family. And that's
13 what we call murder in the third degree. That's what we
14 call manslaughter. Those Boeing executives should not be
15 walking free. Thank you, Judge.

16 MR. CASSELL: We have three more, your Honor.

17 Paul Kiernan.

18 THE COURT: Would you raise your hand to be sworn,
19 please.

20 (The oath was administered.)

21 MR. KIERNAN: I do.

22 THE COURTROOM DEPUTY: Thank you, sir.

23 MR. KIERNAN: Your Honor, thank you for the
24 opportunity to speak this morning. My name is Paul Kiernan,
25 and I am the partner of Joanna Toole who died in the Boeing

1 727 MAX crash in Ethiopia on 10 March, 2019.

2 I have traveled from Ireland to be here this
3 morning, to stand in front of Boeing so that they will see
4 and know the human cost of their decisions and actions to
5 prioritize corporate interests over passenger safety.

6 More important, I have come here today to stand
7 before you, your Honor, with all the humility and respect I
8 have left to appeal for your help to get justice for Jo, for
9 the 346 passengers and crew that lost their lives in
10 Indonesia and Ethiopia and for all passengers that were
11 unknowingly placed in mortal danger by the Boeing Company
12 every time they boarded its defective plane.

13 To reach a common understanding of what justice
14 means I have to do two impossible things. The first is I
15 have to describe to you the person Jo is. For this, I would
16 tell you about a young woman who had dedicated her life to
17 protecting animals and the world to share with them.

18 I would tell you about a fierce advocate and a
19 relentless campaigner who recognized the need to act to
20 protect the world's marine ecosystems long before it was
21 public knowledge or prime time television.

22 And through ambition, extraordinary ability, and
23 dogged determination would build her idea into a world of
24 animal protection's first-ever global campaign.

25 I would tell you about a skilled strategist and a

1 quiet leader who guided international conservation policy,
2 first at the International Whaling Commission and later at
3 the United Nations.

4 I will tell you about a warm, funny, and
5 affectionate person who loved me and who I loved back twice
6 as much.

7 The second impossible thing I must do is explain
8 to you the impact of losing one's soulmate. For this, I
9 would tell you that we had our whole lives to look forward
10 to. How we had planned to have a small, intimate wedding
11 with close family and friends.

12 How we had decided to move to London after Rome
13 and buy our first home. How I had to explain to Jo that
14 starting a family meant more than getting a puppy. It meant
15 dirty nappies and vomit and screaming kids but raising
16 conscientious children who would continue the work of their
17 mum.

18 I would have to explain to you what it is like to
19 carry Jo's bags to her taxi, to kiss her and tell her that I
20 love her, to ask her to let me know when she arrives safely
21 and to wait for that call for the rest of my life.

22 I would have to tell you things that I'm ashamed
23 of. What it's like to avoid your own reflection because you
24 don't recognize the person you have become because you can't
25 bear to look at the sadness and the pain and the knowing

1 that you can never be the same as you were before. But
2 these are two impossible things.

3 Jo was too beautiful, too passionate, too
4 selfless, and too good for my words. Our future together
5 will never happen and the pain of losing it can never be put
6 into words.

7 So the best I can hope for is that hearing about
8 Jo might remind you of someone similar in your own life, who
9 is dedicated to a cause much greater than themselves. Who
10 will fight even when the odds are impossibly stacked against
11 them, who will lose and who will fight again, and who finds
12 time in all of that to love someone much lesser than
13 themselves.

14 If you do know someone like Jo, you will also know
15 that the Deferred Prosecution Agreement is not justice for
16 her or the other victims.

17 It is tolerance, it is acceptance and in many ways
18 it is endorsement of the evils of greed, power, influence,
19 and control that prevail throughout the Boeing Company.

20 These are the same evils that are eroding our
21 values, dividing our societies, exploiting our planet, and
22 making the world a sadder and more desperate place.

23 And so, we look to the justice system to protect
24 us. We ask the members that served in this vital
25 institution to stand for us when we cannot stand, to speak

1 for us when we cannot speak, and to act for us when we
2 cannot act.

3 The Deferred Prosecution Agreement is not justice.
4 It was created and signed in secret between the Department
5 of Justice and Boeing without the involvement of the
6 families, because it was never intended to be justice.

7 Justice for Jo and the other passengers and crew
8 of the fatal Boeing 737 MAX begins with striking down the
9 Deferred Prosecution Agreement that has been found to have
10 violated the rights of the victims.

11 It continues by involving the families in the
12 remedial actions including prosecutions. And it ends with
13 accountability for those who knew and did nothing.

14 I am already waiting for one call that I know will
15 never come. I hope this will not be the second. Thank you,
16 your Honor.

17 MR. CASSELL: Chris Moore.

18 THE COURT: Would you raise your hand to be sworn,
19 please?

20 (The oaths were administered to Mr. and Mrs. Moore.)

21 THE COURTROOM DEPUTY: Thank you both.

22 MR. MOORE: I do.

23 MS. MOORE: I do.

24 THE COURTROOM DEPUTY: Thank you both.

25 MS. MOORE: Thank you for the opportunity, your

1 Honor.

2 THE COURT: Go ahead and pull that microphone up.

3 MS. MOORE: My name is Clariss Moore, and I am the
4 mother of Danielle Moore. My daughter was just 24 years old
5 when she was murdered by people who are now still walking
6 free and will never pay for the consequences or never held
7 for any mistakes that they have taken away.

8 MR. MOORE: Thank you. Ever since a young age, my
9 daughter's enthusiasm and curiosity of life was insatiable.
10 Danielle Moore was a voracious learner, masterful artist,
11 and a total community supporter, a true leader that served
12 with humility. She was a mentor for other students and her
13 smile radiated confidence, happiness, and hope.

14 From her graduation as valedictorian from high
15 school, Danielle had a bright future ahead of her, filled
16 with ambitious hopes and dreams.

17 After high school, she completed her Bachelor of
18 Science degree with honors in marine biology from Dalhousie
19 University. Her thesis research on right whales helped
20 fundamentally change how scientists track and protect this
21 endangered species.

22 During Danielle's university years, she mobilized
23 her community to be a citizen science expedition for
24 Bio-Blitz that discovered a previously undocumented wetland.
25 This discovery helped halt a pipeline expansion in Nova

1 Scotia and continues to improve environmental assessments
2 processes in Canada.

3 Danielle was one of three delegates chosen to
4 represent the youth of Canada at the United Nations
5 Environmental Assembly in Nairobi.

6 At 8:38 a.m. local time, March 10, 2019, she was
7 at the zenith of her life. Six minutes later, she was no
8 longer alive. Her body was desecrated in the most violent
9 way. Danielle was denied a proper death.

10 No loved ones or family members to be with or at
11 her bedside. I cannot even fathom what went through my
12 daughter's mind during those last six minutes. I am still
13 not prepared to think too much about this though it eats my
14 soul every day.

15 I am haunted by the knowledge that a beautiful
16 human can be reduced to 120 jars filled with formaldehyde in
17 a pinewood box.

18 Knowing that this was the second crash of the same
19 model plane in five months enrages me. I know Danielle
20 screamed for her life.

21 The reason my daughter is not alive today is due
22 to Boeing's actions and inactions in light of what the
23 corporation knew about its airplane.

24 The Transportation and Infrastructure Committee's
25 final report itemized a litany of failures, of Boeing's

1 failures and safety oversight of the MAX airplane by
2 engineers, ODA certification orders, test pilots, management
3 production assembly plant, senior management executives, and
4 the board.

5 The Securities and Exchange Commission's report
6 found that in November of 2019 Boeing's safety review board
7 determined that MCAS posed a safety issue that required
8 remediation due to erroneous MCAS activation and crew
9 workload issue, compounded by presence of other alert
10 warnings.

11 Yet the November report to shareholders noted that
12 they have Boeing's assurance that the 737 MAX is as safe as
13 any plane that has ever flown in the skies.

14 The Court of Chancery shareholders lawsuit found
15 that Boeing's board passively received Lion Air crash
16 updates from Muilenburg but did not initiate action.

17 Finally, after the second crash, Boeing's CEO
18 called the President of the United States to prevent the
19 grounding of the 737 MAX, even as the rest of the world
20 recognized the danger.

21 What clearer example can there be of Boeing senior
22 executives' total lack of interest of the lives placed in
23 their hands when passengers around the world boarded the
24 737 MAX every day?

25 To say that the course of our lives are

1 fundamentally changed after the second Boeing MAX crash is
2 an understatement. The day we received that phone call will
3 forever be etched in my mind. My wife's scream was
4 Danielle's echo.

5 My son was alone when he found out. We had to
6 drive 100 kilometers immediately to bring him home.

7 I had to shut off my emotions and compose my
8 mental anguish as best I could. I still have not grieved
9 fully. I have to bury some of my feelings just to make
10 sense of the tragedy.

11 Reading the news about the lack of diligence,
12 oversight and concealment of important information is
13 painfully necessary. But we are tormented by what happened.
14 Every day I work on legal and aviation safety advocacy
15 issues.

16 Sleep is difficult. I wake up in the night with
17 an image of Danielle. Getting back to sleep is
18 medication-dependent.

19 I will never be able to enjoy Danielle's love,
20 witness stories, or someday spoil her children. My wife has
21 always lived her life vicariously through Danielle's
22 adventures. Danielle's dreams were my wife's dreams.

23 They would call and message almost every day.
24 Danielle was her past, present, and future. My wife reads
25 past messages from Danielle and reports remembrance

1 narratives weekly. For almost the last four years there has
2 not been a day that goes by that I have not heard her
3 crying. She continues to search for Danielle. We talk now
4 to an epitaph.

5 Danielle was my son's greatest role model and his
6 best friend. He would work hard to make his sister proud
7 more so than his parents. Finding meaning and joy in his
8 life since his sister's death has been a struggle.

9 He will never be an uncle. If he ever has kids,
10 they will never grow up feeling the love of their amazing
11 aunt. The four people, happily enjoying each other's life
12 through our journey forward, will never be able to continue
13 as it should have. They are dead.

14 We three still are wounded and find it hard to
15 continue with the daily tasks, let alone deal with the loss
16 of a loved one.

17 Our family has been shattered and we are trying to
18 pick up the pieces. As a family, we love traveling Danielle
19 was our navigator and our planner. Our travels now are to
20 hearings and commemorations.

21 Throughout this ordeal of trying to understand how
22 so many blunders occurred and how the opportunities to
23 correct these occurred, these errors are ignored, we have
24 been shrouded by many layers of pain.

25 But the final insult is to understand that the

1 Department of Justice is supposed to protect the rights of
2 its people and prosecute criminals, does not even recognize
3 you or your loved one as a victim, but instead gives succor
4 to murderers to protect their earnings potential and
5 maintain market share is morally repugnant.

6 The January 7th DPA was a tool of judicial
7 expedience, and overlooked many of the salient facts. The
8 public has not even been informed what facts that were used
9 to relieve the criminals of their true punishment if, in
10 fact, there were any. How can we trust the Department of
11 Justice now?

12 Deferred Prosecution Agreements may work when a
13 corporation has defrauded people, the government, or any
14 other corporations of money, because the fine is to repay
15 the victims what was rightfully theirs. It should not be
16 used for corporate mass murder.

17 One would expect a thorough investigation by the
18 Justice Department. The \$250,000,000 fine that the
19 Department of Justice imposed on Boeing was a slap on their
20 wrist. It did not take into account the consideration
21 market and opportunity gained by expediting the
22 certification and selling the MAX as a minimal pilot
23 training product. It is a slap in our face.

24 This DPA, at best, addresses what happened after
25 the first crash. Boeing, however, carried that fraud

1 forward by not acknowledging that the certification was
2 erroneous with respect to our case. The initial fraud
3 created the monster that killed my daughter and 156 others
4 on Flight ET302.

5 What Boeing did, or more to the point, what they
6 didn't do after that first crash, is one of the most
7 insidious crimes that can be perpetrated upon society.
8 Knowing that the fraudulently certified product was not
9 airworthy, they continued it to fly.

10 If Boeing's story about one employee perpetrating
11 these ill deeds on their behalf was true and they were truly
12 contrite after news of Flight JT610, there would be no
13 second crash. This is manslaughter.

14 It was agreed that the Boeing Corporation's zest
15 for market share in the commercial aircraft manufacturing
16 industry that essentially influenced their immoral actions.

17 Two technical flight pilots who were scapegoated
18 were their foot soldiers. How can anyone with critical
19 thinking skills believe that these minions commandeered the
20 Boeing Corporation and caused not one, but two horrific
21 crashes?

22 Executives and directors of corporations need to
23 understand that they must take personal responsibility for
24 errant features of their products. When accidents happen,
25 the right decision is to take precautions, not to gamble

1 with other people's lives.

2 This is textbook ethics cases for MBA,
3 engineering, and law students. If left as it was
4 perpetrated, as presented on the day after the U.S.
5 insurrection to be buried in the annals of history, then our
6 students will learn that it's okay to lie, to conceal facts,
7 or to distort truth in exchange for a scintilla of one's
8 gains.

9 Boeing should be prosecuted for their criminal
10 behavior after the first crash. Danielle's family too will
11 carry her torch and it will cast a light beneath the umbra
12 of the agents working with the criminals. Thank you.

13 MR. CASSELL: Our last one, your Honor, will be
14 from Nadia Milleron and Michael Stumo.

15 THE COURT: Would you raise your hands to be
16 sworn, please?

17 (The oaths were administered to Ms. Milleron and
18 Mr.{ }Stumo.)

19 MS. MILLERON: I do.

20 MR. STUMO: I do.

21 THE COURTROOM DEPUTY: Thank you both.

22 MS. MILLERON: Your Honor, thank you for allowing
23 victims to speak in this case. Obviously, it's difficult
24 for all the people around the world to appear here, but we
25 hope that this small group can give you the sense of the

1 whole.

2 And over the last four years, we've gotten to know
3 these are the people that died with our daughter on the
4 plane. This is only a third of the people that were killed
5 by the MAX, by Boeing's MAX. And so, we've gotten to know
6 these people and we try to show the pictures that their
7 families lent to us so that the world remembers them.

8 We are Michael Stumo and Nadia Milleron. We are
9 parents of Samya Rose Stumo, who was age 24 when the
10 Ethiopian Airlines, Flight 302, a new Boeing 737 MAX
11 aircraft, crashed.

12 And, Mike Delaney, when you dozed during these
13 proceedings, you hurt us. And it reminds me of the CEO
14 Calhoun -- Muilenburg when he was before the Congress. The
15 Congressperson asked him --

16 THE COURT: Go ahead and address me.

17 MS. MILLERON: -- when was the crash?

18 What was the date of the crash? And he didn't
19 know. He didn't know what the date was. But for us,
20 March 10th is indelible.

21 We are here to speak to the Court, of course, but
22 also in the presence of Boeing so that you take it seriously
23 and really feel what happened, what actions the company
24 took, and what was the result.

25 The result was terror. My daughter is not here to

1 speak, so I have to guess that she was absolutely terrified
2 in the last minutes of her life, along with everybody else.
3 We're forever haunted by those horrible final minutes.

4 Could we have kept her safe somehow? Could we
5 have learned -- if we had kept up with the press, could we
6 have learned about this crash?

7 We received her in 122 pieces, seven months after
8 the crash. That was one-third of our daughter's remains,
9 and the rest is scattered in Ethiopia. Dignity after death
10 is denied her and her family.

11 Sammy's little brother writes: "Samya was the
12 shining star in our family. Her mixture of vibrant joy,
13 selflessness and deep, permeating love drew people to her
14 like flowers to the sun. People she met for only a few
15 moments would remember her for years after with sort of a
16 wistful glow in their chest.

17 "We, her family, love Samya so much and she adored
18 us. She could make you feel so cared for, like the center
19 of her universe. In one of her hugs, you could forget all
20 of life's problems. Her love was so strong. It was love
21 with humor and kindness that makes me ache, because I know I
22 will never feel it again.

23 "With Samya around, tough family dysfunction
24 melted away under beams of laughter and playfulness she
25 constantly emitted. And she put in the work visiting

1 far-flung relatives all over the country, being the glue
2 that held us together, being the gravity that brought us
3 closer.

4 "Samya loved justice too. She saw suffering in
5 the world, and it hurt her. I remember she'd call me at odd
6 hours to vent the frustration and anger she felt at abuses
7 she was seeing. Vulnerable, beaten-down people forgotten or
8 dismissed by those with the most power to help them.

9 "Samya wanted to change things and she wanted to
10 do it with her own hands. That's why she joined the
11 nonprofit ThinkWell. That's why she flew to Kenya. That's
12 why she was on Boeing's purposely defective plane.

13 "Samya Rose is gone now and life has lost a lot of
14 light, hope, and love. Our family is deeply wounded and the
15 person best at helping us heal is dead. The future I
16 imagined with my sister is broken and now the jagged gaps in
17 my life cut me every time I think of them.

18 "Samya is never going to meet my kids. I'm never
19 going to meet her beautiful family. My cheerleader, my
20 confidant, my role model, just doesn't exist anymore.

21 "Samya could have changed the world. The love she
22 infused in her family, friends, and good works would have
23 continued to bloom and glow. She would have continued
24 living life with the passion and love that few could match,
25 but that won't happen now.

1 "And for what, because Muilenburg and Calhoun
2 wanted to use fraud to scrape out a bit more profit? After
3 all the pain we've gone through, that just twists the knife.

4 "Boeing's continued secrecy and risk-taking hurts
5 us. We try to work to prevent similar crashes, but Boeing,
6 who didn't ground their defective plane after Lion Air,
7 knowingly caused the second crash.

8 "On so many levels, with so many people, they
9 implement the minimum standards of safety today. The
10 Department of Justice recently reviewed information that
11 that -- received information that senior Boeing executives
12 committed and continue to commit fraud during the production
13 of MAX airplanes after both crashes and even after signing
14 the DPA.

15 "Our criminal justice system is meant to change
16 behavior of those who kill and prevent them from killing
17 again."

18 Two days ago, Attorney Leon explained to the
19 families that the fate of our child's killer was decided by
20 secret contract between the Department of Justice and
21 Defendant Boeing, a contract known as DPA.

22 A secret contract is not justice, but it is
23 business as usual for Boeing. Our grief is boundless at
24 discovering that we are a society that tolerates disregard
25 of human life for profit.

1 Does our system protect innocent passengers or
2 protect a company that killed passengers? Holding Boeing
3 fully accountable is the right thing to do and the only way
4 for us to end the torture of this repeated crime.

5 We pray that this Court holds Boeing to standards
6 of justice. Thank you, your Honor.

7 My husband, Michael Stumo.

8 MR. STUMO: Thank you, your Honor. This is my
9 daughter, Samya Rose Stumo, who is 24, would be 28 this
10 year. Her brother -- her older brother Tor, which Nadia
11 read, her older brother Adnaan couldn't be here, but he said
12 this.

13 "Samya was on her way to Uganda to prepare the
14 ground for rural medical clinics based on engagement with
15 local communities in detailed understanding of their needs.

16 "She had just graduated with a degree in global
17 health. It was the start of a 50-plus-year career that
18 would have brought much needed healthcare to countless
19 people around the world.

20 "Add that to the mentorship, friendship, and
21 political impact that her force and personality and her work
22 would have facilitated, the loss is literally impossible for
23 any one of us to comprehend." That's from her brother.

24 The last communication we got from Samya, she
25 texted us, "Just landed Addis Ababa. Another two hours to

1 Nairobi." That was it. She was in seat 16-J. It was an
2 aisle seat on that plane.

3 It was a roller coaster for six minutes, that
4 plane. The captain and first officer used physical brute
5 force to try to pull the yoke back up and the MCAS kept
6 triggering and they lost.

7 The plane plowed into the ground at 500 to
8 600 miles an hour into a hole burying itself. We were
9 there. We saw the hole. We saw them trying to take pieces
10 and parts out.

11 There wasn't even a whole plane there. It was so
12 buried, it disintegrated. The pieces of passengers were
13 mixed up with the jet fuel, the plane parts, the dirt, all
14 together. Nadia and my son, Tor, saw body parts exposed to
15 the elements there in an Ethiopia farm field.

16 We couldn't however simply curl up and grieve, as
17 you've heard from others, because Boeing continued a
18 strategy of concealment, cost-cutting, stock price
19 appreciation, dividend distribution. And this continued
20 behavior and what we learned increased my grief, Nadia's
21 grief, my family's grief.

22 We learned that Dennis Muilenburg knew and was
23 briefed by his staff after Lion Air that the MCAS needed --
24 was an ongoing safety risk and needed a fix. He was upset
25 about the revelation in the press about it, and he said we

1 can't put that in the press release.

2 Instead, the press release to the public said the
3 MAX is as safe as any airplane that has ever flown the
4 skies. This is November 27th of 2018, after the Lion Air
5 crash in October.

6 The National Transportation Safety Board
7 complained to Boeing about that misleading statement and the
8 SEC fined him for it as a lie for stock price appreciation.

9 In April 2019, after our Ethiopian crash,
10 Muilenburg again concealed information from investors and
11 reporters at their shareholder meeting. He had been briefed
12 there were gaps in the process, in the certification process
13 and unknowns.

14 Instead, however, upon questioning, he said there
15 was no surprise or gap or unknown, that someone -- there was
16 nothing that slipped through the certification process.
17 That was a lie and the SEC fined him for that too.

18 But after that statement, Boeing's share price
19 appreciated. We were still on the floor grieving at that
20 time, but he's pumping up the share price with untruths.

21 We learned from the biggest investigation in the
22 history of the House Transportation Committee that an early
23 core Boeing goal was to prevent the FAA from requiring
24 simulator training throughout MAX development.

25 Boeing didn't develop a great airplane and then

1 determine whether training was required. It tried to
2 prevent the FAA from requiring the training.

3 The report, we also learned that its 2011 contract
4 with Southwest included a \$1,000,000 penalty for each
5 aircraft if simulator training was required.

6 This was before the aircraft was built with up to
7 391 planes. That's up to a \$391 million total penalty that
8 motivated further the culture of concealment at Boeing.

9 We know that Boeing -- we learned that Boeing and
10 we saw Boeing trying to blame the pilots. They didn't do
11 everything that they could have done to save that plane.
12 They didn't say the MCAS was a problem and needed a fix.
13 That's not what they said.

14 Boeing's conspiracy captured the FAA, as Senator
15 Cruz said in a Senate hearing. Congress had found that
16 Boeing had too much influence over FAA oversight. The House
17 investigation specifically set a whole section dedicated to
18 Boeing's culture of concealment over years.

19 We learned from the House report, I learned that
20 four out of ten Boeing-authorized representatives, those
21 supposedly acting for the FAA themselves, perceived undue
22 pressure by Boeing for raising safety concerns during MAX
23 development.

24 We also learned that in 2012, at the beginning of
25 this plane design certification, Boeing knew that it took 10

1 seconds for some pilots to respond to a surprise MCAS
2 activation, rather than four that everything was based on.

3 They concealed that despite the fact that they had
4 an ODA status from FAA to self-regulate. They concealed it
5 because it risked more scrutiny, design changes, and pilot
6 training.

7 We learned in the House report that in June 2016
8 Boeing employees formulated a plan to disguise MCAS as a
9 mere addition to the existing speed trim system. That rule
10 was, don't describe MCAS as a new function, so they could
11 avoid cost and certification impact.

12 We learned from the House report that Boeing did
13 not tell the FAA about concerns of its authorized
14 representatives in 2016 about -- what about repetitive MCAS
15 activation, if there was faulty AOA, angle of attack data?
16 Didn't say anything. That was a problem that happened with
17 Lion and Ethiopian Air.

18 I also learned that the angle of attack disagree
19 alerts on more than 80 percent of the MAX fleet were
20 inoperative and therefore did not comply with the
21 FAA-approved-type certificate. Boeing concealed that from
22 the FAA until after Lion Air.

23 We learned that Boeing avoided upgrading the pilot
24 alert system in the MAX to comply with 2011 rules on those
25 alert system -- on the FAA rules. Those rules were to

1 prevent false, confusing, and nuisance alerts that interfere
2 with pilots' ability to avoid a crash.

3 But Boeing said it's too much money to upgrade it.
4 We put it on the 787, but it's too much money. It cost over
5 \$10 billion.

6 But the whole MAX development program only cost
7 two and a half billion. It was that antiquated and
8 confusing pilot alert system that was a contributing factor
9 to the Lion Air, the Ethiopian Air, and five other crashes.

10 Despite all this on the record, Boeing and the
11 Justice Department compound our grief and deny our rights as
12 victims. We're not victims? They fought hard to keep us
13 from being recognized as victims.

14 And they pretend this is a simple fraud by two
15 guys and a couple emails and fight against, including the
16 full scope of this top-down multi-year conspiracy. We've
17 dedicated ourselves to no third crash.

18 We just want to grieve, but this farce increases
19 the pain of losing our daughter. The perpetrator, Boeing,
20 still has no independent oversight, even as it continues its
21 reckless behavior.

22 I ask -- we ask this Court to impose conditions of
23 release that include independent monitoring and public
24 disclosure of those reports to help change Boeing's culture
25 and prevent a third crash. Thank you, your Honor.

1 MS. MILLERON: Thank you.

2 MR. CASSELL: If I could briefly be heard on
3 conditions of release, your Honor?

4 Obviously, now that Boeing has been arraigned
5 under Section 3142, the Court has its own judicial
6 obligation to impose conditions of release.

7 Obviously, there are separate issues pending in
8 front of the Judge, our DPA motions, and I won't discuss
9 those today. I will focus exclusively on conditions of
10 release.

11 The families today ask for only one thing, as you
12 just heard: No third crash. They want the Court to impose
13 conditions of release that are commensurate with the
14 seriousness of the crime, which you've just heard described,
15 and the seriousness of the criminal here.

16 We are asking for three conditions: the standard
17 condition, no new crimes to be committed by Boeing. Every
18 other felon that comes in front of this Court has that
19 condition imposed.

20 We want an independent corporate monitor. So I
21 will explain an oversight or transparency to the conditions
22 of release.

23 There can be no doubt that the Court has authority
24 to propose each of those conditions. As we've laid out in
25 our memorandum filed last night, 3142(c) obviously gives you

1 that authority.

2 There's question, I suppose, of what is the record
3 that would justify those conditions of release? We know
4 that at this point we have a criminal information, you have
5 the DPA. Although that seems to have been carefully curated
6 to minimize Boeing's role.

7 Your Honor sat through two days of evidentiary
8 hearings about how Boeing's crimes directly and proximately
9 killed 346 people. You've made findings on that and that is
10 in the record now.

11 You have the exhibits. Mr. Stumo just referred to
12 the House Transportation Committee Report which was accepted
13 in evidence as Families' Exhibit 4 during that hearing.

14 You've now had powerful statements under oath from
15 12 representatives. We've filed 27 additional impact
16 statements yesterday as well. We have pending motions to
17 supplement the record with additional facts if the Court
18 needs them.

19 So I won't belabor the details of the crash as
20 you, your Honor, knows those. We proffered an extensive set
21 of facts yesterday. And too often in America those of us
22 who defend the free enterprise system hear in response,
23 well, those big companies, they put profits over people.
24 Often those charges are without substance. But in this
25 case, that's the stone-cold truth.

1 For no other reason than to jack up its stock
2 price and pay corporate executives handsome bonuses, Boeing
3 concealed the MCAS system.

4 And so today, in crafting conditions of release,
5 which is the Court's obligation, the Court needs to know
6 only one fact: For a few dollars more, Boeing committed the
7 deadliest corporate crime in U.S. history. They counted on
8 the political connections, wealth, and power to get away
9 with it.

10 We come to this Court, the families come to this
11 Court this morning, asking for a response commensurate with
12 the crime that Boeing has admitted in its DPA, although they
13 seem to be backing away from that somewhat this morning.

14 We ask for an independent corporate monitor and
15 review of their corporate compliance efforts. Those are
16 somewhat overlapping requests. We have the exact language
17 that we would like in the filing we provided last night.

18 So let me turn to the independent monitor. Your
19 Honor, in the DPA, Boeing made certain commitments that they
20 promised to carry through on.

21 One of them, by the way, was they were going to
22 never, ever back away, in litigation or otherwise, by
23 contradicting the acceptance of responsibility.

24 Well, you heard this morning Boeing pled not
25 guilty. That sounds to me like not accepting

1 responsibility, and we will be filing the appropriate
2 motions at the appropriate time on that point.

3 But in considering conditions of release, if you
4 had a criminal who came before you who accepted
5 responsibility, you would probably impose less stringent
6 conditions. But you are imposing conditions on release on
7 an accused criminal who pled not guilty this morning.

8 Now, one of the other commitments that Boeing made
9 in the DPA was that they would create, "A culture of ethics
10 and compliance with the law in its day-to-day operations."
11 That's in Attachment C to the DPA.

12 As you've heard this morning, the victims are
13 skeptical about whether Boeing is going to carry through on
14 that commitment. We also have been fortunate enough to have
15 an amicus brief from Senator Cruz that commented on this.

16 Here's what he said: "Maybe that compliance
17 program will be good. Maybe it won't. But what is certain
18 is that all important decisions about corporate compliance
19 will be made behind closed doors away from public
20 accountability."

21 So the families today ask you to create conditions
22 of release that would respond to that secrecy.

23 Now, one of the things you may hear from the
24 government, if they respond, is, well, you know, we don't
25 see a lot of precedent for doing something like that, but

1 this is an unprecedented case.

2 Typically, when a DPA is presented to a court like
3 this one, there's been negotiations between the parties and
4 then it's presented.

5 Of course, one of the things that's supposed to
6 happen as part of those negotiations is that family members
7 are supposed to have an opportunity to speak to the
8 Department and say, "We'd like a corporate monitor; we want
9 additional oversight here."

10 That process was short-circuited. And so, now
11 this is an opportunity for the Court to correct that
12 short-circuiting and to put in place some of the conditions
13 that we think would have been put in if this deal had been
14 crafted in public light, rather than in the dark of night.

15 Now, often DPAs do have corporate monitors. We
16 presented in our filing last night I think the most recent
17 data is about half of all DPAs have a corporate monitor as
18 part of that.

19 For some reason, Boeing, once again, seems to have
20 weaseled out of standard conditions, and there is no
21 corporate monitor here. But corporate monitors can be
22 really important.

23 Boeing can't be jailed. The fines that might be
24 imposed on it will probably just be passed on to consumers
25 through price increases. If the Court is concerned about

1 ensuring safety, a monitor goes right at that. And that, of
2 course, is your obligation today under 3142 to reasonably
3 ensure the safety of the community.

4 We also provided some academic perspective on
5 corporate monitors in our brief. One of the areas where
6 corporate monitors is particularly important is where a
7 crime has caused great harm. I can't imagine a crime that's
8 caused greater harm than this one.

9 We're also asking that there would be a public
10 unveiling of a monitor report. And we've included in our
11 briefing the American Bar Association has set up standards
12 and procedures where that can be done.

13 We also understand there is some confidential
14 information in this case. Our proposal always envisions,
15 first, a knowledgeable person looking at the materials to
16 try to avoid including confidential information in the
17 public release.

18 And then an opportunity for Boeing and the
19 government to provide their input, final review by this
20 Court. So there would never be a situation where
21 confidential information would be reviewed without full
22 input from the parties and action by the Court.

23 Also, in proposing a corporate monitor, I think
24 maybe I misspoke yesterday in our briefing. I probably used
25 the wrong word. When I think of corporate monitor, I think

1 of someone maybe coming in to desegregate a school system or
2 to take over a prison to provide prisoner rights or
3 something along those lines.

4 I think the word I should have used is corporate
5 examiner, because what we're asking for here is not for
6 somebody that's going to go in and create measures where
7 Boeing will then have a culture of compliance.

8 Boeing has promised to do that. We simply want an
9 independent set of eyes that the Court would appoint to look
10 to see whether Boeing is carrying through on that.

11 Now, we've proposed it would be a report to this
12 Court on December of 2023, about one month before the DPA
13 ends, so that there would be an opportunity for the Court to
14 evaluate that as it finishes up its obligation under the
15 DPA.

16 Now, we've also proposed a slightly different take
17 in addition to the corporate monitor/corporate examiner. We
18 propose that information about Boeing's corporate compliance
19 program would be provided to three independent experts that
20 the victims' families would have confidence in.

21 You will remember Vickie Norton, who testified
22 here in August. We are also anticipating, from Berkeley,
23 Rune Storesund testifying in that August hearing. He did
24 not, but he's an expert in exactly these areas of risk
25 compliance. Also, Javier de Luis, who is a lecturer in

1 aeronautics up at MIT, recently appointed by the FAA to be
2 on some oversight boards.

3 We would like for Boeing's corporate efforts to go
4 to those three experts. Under a confidentiality agreement,
5 they could look at it and then they could make a public
6 report.

7 And they also would be in a position then to
8 provide advice to Boeing as to how to make sure that that
9 culture of ethics that they're promising is actually
10 delivered on. Now, those are, I think, a very
11 straightforward set of proposals. Again, the text of our
12 actual proposal is in the brief we filed yesterday.

13 Neither the government nor Boeing can have any
14 reasonable objection, in our view, to those conditions of
15 release. You've heard this morning from the victims'
16 families. I frankly didn't know what they were going to
17 say.

18 I told them that the Court had been kind enough to
19 give the victims an opportunity to come in and we
20 transmitted the message out, and this is what you saw this
21 morning.

22 What you saw this morning is what I've known now
23 for the last year. The victims don't trust the Justice
24 Department. That's obvious. We could debate whether that
25 trust -- whether that distrust is fair or unfair, but that's

1 a fact.

2 And so, against that background, the only thing
3 the Court needs to know in determining conditions of release
4 is that the families and the broader public have no
5 confidence in the Justice Department in this particular
6 case.

7 Against that backdrop, a second set of eyes to
8 look at what's going on, other than just this secret dealing
9 between Boeing and the government, will ensure both
10 confidence in the process and ultimately the public safety
11 by making sure that there is an independent evaluation on
12 what's going on.

13 And for Boeing, it should want the best possible
14 corporate compliance program that it can put in place after
15 these horrific crashes.

16 And so, having, again, an independent court
17 monitor, an independent set of eyes, a victim expert to help
18 Boeing, maybe they will look at everything and say
19 everything is great, or maybe they will identify some flaws.
20 Flaws that could lead to a third crash.

21 So in closing, I know at some levels this case has
22 been somewhat complicated, but on some levels, and I think
23 today is probably one of those levels, it's really very
24 simple. Every week in this courthouse accused felons walk
25 in here, you know, like a bank robber might walk in and the

1 Court has to decide, or the magistrate judge has to decide,
2 is that bank robber going to be locked up or is there going
3 to be an ankle monitor put onto the bank robber? The
4 reason, of course, the court does that is an accused bank
5 robber might be a risk to public safety.

6 And so, this case is really no different. Instead
7 of -- except that, instead of stealing some currency from a
8 federally insured bank, Boeing stole something much more
9 precious. As you've heard this morning, Boeing conspired to
10 steal the hopes, dreams and very lives of 346 passengers and
11 crew, not on just one flight, but on two flights.

12 And in the wake, Boeing left hundreds of grieving
13 families from Jakarta to Addis Ababa and countless cities
14 and towns and everywhere in between. Boeing acted
15 callously, recklessly, and yes, criminally.

16 It shouldn't be treated any differently than any
17 other criminal who comes before the Court, except for one
18 thing: This Court's conditions of release should match the
19 massive scope of Boeing's crime.

20 We ask for the functional equivalent of an ankle
21 monitor, something that will reflect the nature and severity
22 of what Boeing has done.

23 We ask for an independent and transparent review
24 of Boeing's safety measures. In the wake of 346 deaths
25 directly and proximately caused by Boeing's crime, the

1 safety of the community demands that.

2 MS. LARYEA: Thank you, your Honor.

3 The government agrees with Mr. Cassell that we
4 have to start with 3142, which instructs the Court to impose
5 the least restrictive condition or combination of conditions
6 that the Court determines will reasonably assure two things:
7 Defendant's appearance as required, and the safety of other
8 persons and the community. And as Mr. Cassell discussed
9 right now, the focus today is on the second prong, danger to
10 the community.

11 Now, the government notes that, with respect to
12 that prong, danger to the community, the Court must make a
13 determination as to what is the least restrictive condition
14 that will -- sorry.

15 The Court first has to make a determination by --
16 whether, by clear and convincing evidence, Boeing poses an
17 ongoing danger to the community. And then, if so, determine
18 the least restrictive conditions to address that concern.

19 Now, Mr. Cassell has asked for -- the crime victim
20 representatives have asked for three conditions today, the
21 first one being that Boeing comply with the law. The second
22 is an independent examiner. And the third is three
23 individuals to review Boeing's compliance with the terms of
24 the DPA.

25 With respect to the first request, the government

1 supports Mr. Cassell's request to have, as a condition of
2 release, that Boeing comply with the law and not commit any
3 federal, state, or local crimes.

4 The government does not support, however, the next
5 two requests. I will discuss those in turn. With respect
6 to the second request, the government does not support the
7 imposition of a judicial examiner to evaluate Boeing's
8 compliance with the DPA for three reasons. First, such an
9 imposition is unprecedented. Second, it is unnecessary.
10 And third, it is inappropriate.

11 With respect to the first reason, such an
12 imposition is unprecedented. We are not aware of any other
13 instances in which a court imposed an independent examiner
14 or monitor in connection with a criminal DPA where the
15 parties had not already agreed to such a monitor or examiner
16 as part of the DPA's terms. And Mr. Cassell has not
17 provided any precedence to the contrary.

18 Now, in the briefing filed yesterday, the briefing
19 mentioned one case in order to support this request, but
20 that case, your Honor, is completely distinguishable. That
21 case involved a company named Computer Associates that
22 entered into an 18-month DPA in the Eastern District of
23 New York in 2004.

24 There, the parties agreed as part of the
25 negotiated terms of the DPA, that the company would engage

1 an independent examiner that would be appointed by the court
2 for an 18-month term.

3 So there, the court's appointment of that
4 independent examiner was simply giving effect to the term
5 that had already been negotiated and agreed upon by the
6 parties.

7 Not so here, your Honor. Here, the DOJ and Boeing
8 did not agree in the DPA that a monitor was appropriate, let
9 alone a judicially appointed monitor or examiner.

10 So Computer Associates, which was mentioned in the
11 filing yesterday, does not provide appropriate support for
12 this request.

13 Additionally, the filing yesterday mentioned the
14 imposition of special masters and corporate monitors as part
15 of court-ordered probation.

16 That situation is also distinguishable because
17 here we have a criminal DPA, there has not been a conviction
18 and there is no probation.

19 Secondly, as I mentioned, the government does not
20 support this request because imposition of such an
21 independent monitor or examiner is unnecessary.

22 It's unnecessary for three reasons: First, the
23 DPA already imposes significant compliance requirements.
24 Second, the Department is best positioned to enforce the
25 DPA. And third, over the last two years, Boeing has

1 complied with these requirements and made substantial
2 changes and improvements to its compliance program.

3 I will take each of those in turn. With respect
4 to the first one, Attachment C of the DPA outlines the
5 Department's expectation for Boeing's compliance program to
6 prevent the reoccurrence of misconduct.

7 The DPA provides -- requires Boeing to engage in
8 enhanced self-reporting requirements which are described in
9 Attachment D of the DPA and include the following: Boeing
10 must undertake three annual reviews of its anti-fraud
11 compliance program and prepare and submit reports describing
12 the results of those reviews.

13 As part of these reviews, Boeing is required to
14 undertake the following activities, among others: inspection
15 of relevant documents, including Boeing's current policies,
16 procedures, and training materials concerning compliance
17 with U.S. anti-fraud laws.

18 Inspection and testing of selected systems and
19 procedures of the company at sample sites, including
20 recordkeeping and internal audit procedures. Interviews --
21 sorry -- meetings with and interviews of relevant, current,
22 and where appropriate, former directors, officers,
23 employees, business partners, agents, and other persons,
24 analysis studies and, most importantly, comprehensive
25 testing of the company's compliance program.

1 Secondly, the Department is best positioned to
2 implement the DPA and evaluate Boeing's compliance with
3 these rigorous requirements. The fraud section has
4 compliance experts who routinely evaluate compliance
5 programs and oversee corporate monitorships and
6 self-reporting.

7 And contrary to any other assertions, although the
8 prosecutors in this case did not believe they could prove
9 the crime charged in the information directly and
10 proximately caused the crashes, they understood and -- they
11 always understood and appreciated the indescribable and
12 irreparable losses suffered by the crash victim
13 representatives and kept that in mind throughout the
14 negotiation process and investigation. The fraud section of
15 the Department is still best positioned to provide its
16 compliance expertise in this case.

17 Lastly, I want to point out that this is a unique
18 situation. The DPA has been in place for two years. Over
19 those two years, the government has been enforcing and
20 implementing the requirements of the DPA and overseeing
21 Boeing's compliance with those requirements.

22 As I mentioned before, Boeing has complied with
23 the requirements and made significant enhancements. The
24 government's measure of whether the DPA is successful,
25 whether these compliance enhancements are sufficient is

1 contained in Attachments C and D of the DPA.

2 The standard is to ensure that Boeing's compliance
3 program is reasonably designed, implemented, and enforced so
4 that the program is effective in determining and deterring
5 violations of the U.S. fraud laws.

6 Attachment C provides additional information about
7 how the Department will evaluate whether the program is
8 reasonably designed, implemented, and tested. This is the
9 metric that the Department and the fraud section has used in
10 several other cases. It is a metric that has been used for
11 the last two years, and the Department is best positioned to
12 determine whether that metric has been met.

13 So on to the third reason why the government
14 believes that imposition of an independent examiner -- the
15 government opposes the imposition of an independent examiner
16 here. The third reason the government opposes that is
17 because such an imposition is inappropriate.

18 The DPA is an agreement between the Department and
19 the defendant, Boeing. Per the terms of the DPA, the
20 Department has the sole discretion to implement and enforce
21 the DPA and evaluate Boeing's compliance with the DPA's
22 terms.

23 As with any agreement it enters, the Department
24 has done so here. It has enforced the terms of the DPA and
25 exercised oversight over Boeing's compliance with its

1 obligations thereunder. The Department has no incentive to
2 pretend the DPA is working.

3 To the contrary, the DPA explicitly gives the
4 Department, in its sole discretion, the authority to extend
5 the terms of the agreement to ensure Boeing complies with
6 all of its obligations and to hold Boeing in breach and
7 prosecute the company if it fails to comply with any of
8 those terms. The Department in the past has exercised both
9 of these rights where necessary and appropriate.

10 The assertion that such a monitor is necessary
11 because the Department cannot be trusted to monitor
12 Boeing suggests that the judicial monitor proposal is an
13 inappropriate attempt to monitor the Department's
14 enforcement and implementation of the DPA.

15 As the Second Circuit has stated in the HSPC case
16 from 2017, the district court has no freestanding
17 supervisory power to monitor the implementation of the DPA,
18 and this court should not impose an independent examiner to
19 do so here.

20 With respect to the proposal that the Court may
21 impose additional measures on Boeing based on a final report
22 from the proposed judicial independent examiner, the Court
23 stands by its arguments in opposition to the motion for the
24 exercise of the Court's supervisory authority, which is ECF
25 60, regarding the Court's inability to impose additional

1 requirements as part of the DPA.

2 With respect to the third request for conditions
3 of release here, which is that three individuals be
4 appointed to ensure that Boeing has been in compliance with
5 its obligations under the DPA, the government notes that
6 this condition is also unprecedented and not supported by
7 any case law or other legal authority.

8 Victims' counsel offers no example of the proposal
9 they are recommending having been applied in any other case.
10 They offer no case law or other authority to support their
11 position for the Court adopting this novel proposal.

12 The victims' representatives are asking
13 effectively for the Court to approve these three individuals
14 who are being selected to play a partisan role.

15 THE COURT: I'm sorry, to play what?

16 MS. LARYEA: I'm sorry. I meant to say these
17 three individuals are not independent, as Mr. Cassell
18 mentioned, nor are they disinterested. One of the
19 individuals that was proposed has a close family member who
20 died in the Ethiopia, Flight 302 crash.

21 Another testified at the direction of Mr. Cassell
22 at the two-day evidentiary hearing and received hourly
23 compensation for her testimony.

24 And the third was also slated to testify at the
25 evidentiary hearing at the direction of Mr. Cassell.

1 This proposed process would have the effect of
2 allowing these individuals selected by the victims'
3 representatives to frame issues relating to Boeing's DPA
4 compliance efforts in anticipation of what the court or a
5 possible independent monitor may say.

6 This would be more akin to advocacy than an
7 objective expert review. And the CVRA already provides
8 victims' representatives the ability to be heard as an
9 advocate. As such, the government also opposes the third
10 request from the victims.

11 Lastly, to the extent the victims are also
12 requesting that the reports, the self-reports submitted by
13 the company be made available, the government notes that the
14 confidentiality of these reports are critical to ensure that
15 there is open dialogue between the company and the
16 defendants that it oversees to get full information about
17 any issues that may arise and how the company is -- the
18 steps the company is taking to address them and the steps
19 it's taking to enhance its compliance program, and as such,
20 the government also opposes the disclosure of these
21 confidential reports.

22 THE COURT: Okay. You mention you, on occasion,
23 have the DPA appoint a monitor, and that you didn't in this
24 case. What goes into your decision on that issue?

25 MS. LARYEA: Yes, your Honor. So Mr. Cassell

1 cited in his filing yesterday the Morford memo. There are a
2 number of Department of Justice policies that determine when
3 the imposition of a corporate monitor is appropriate.

4 The imposition of a corporate monitor is never a
5 sanction. It is never meant to be punitive. The
6 determination looks at whether the current -- the company's
7 compliance program at the time of the resolution, is it
8 reasonably designed? Has it been implemented? And has it
9 been tested?

10 If the Department is not satisfied that it has
11 been reasonably designed, implemented, or tested, and that
12 there is a need for an independent third party to come in to
13 ensure both design, implementation, and testing, that is the
14 main reason that the monitor would be imposed in such a
15 case. But, yeah, there are policies that govern that that
16 are transparent and available on the DPS's website.

17 THE COURT: So in this case you've made the
18 determination that Boeing meets that standard?

19 MS. LARYEA: Correct, your Honor. We made that
20 determination. There's three different compliance
21 obligations that can be imposed on a company. There's
22 regular self-reporting, enhanced self-reporting that has
23 additional obligations, and an independent monitor.

24 Here, the government decided to go with enhanced
25 self-reporting where it has more regular meetings with

1 Boeing. The DPA lists quarterly. Here, it has been more
2 often than quarterly to ensure that Boeing is enhancing its
3 compliance obligations as required under Attachments C
4 and D.

5 THE COURT: Now, you say, as it relates to the
6 employment of an independent examiner, that that would be
7 adding to the DPA, which I don't have the power to do it.

8 Do you see any distinction between adding to the
9 DPA and imposing an examiner or a monitor under 3142 to make
10 sure -- under that authority only, to make sure that the
11 public is protected?

12 MS. LARYEA: Yes, your Honor. But the request
13 here, as I understand it, is imposition of an independent
14 examiner to look at Boeing's compliance with the DPA, which
15 takes us back to looking at the DPA and essentially trying
16 to get a monitor in place to look at whether the DPA is
17 being complied with, whether it's being implemented and
18 enforced.

19 As I said before, that is within the sole purview
20 of the Department, both per the DPA and per case law that we
21 have cited that says the Department is responsible for that
22 implementation and evaluation.

23 Now, as the Court mentions, and the government is
24 not disputing that under 3142, to the extent the Court
25 determines that there's clear and convincing evidence that

1 Boeing is an ongoing danger to the community, the Court can
2 make a determination on what conditions are appropriate.

3 THE COURT: Would it be appropriate for me to,
4 under 3142, to appoint someone to ensure that Boeing is
5 doing things that would protect the public, even if those
6 factors that I would impose would mirror the factors in
7 the DPA?

8 In other words, I wouldn't be examining the DPA or
9 being concerned about the DPA in any manner, but to the
10 extent that those things would overlap, at the safety to the
11 public, would I be able to do that under 3142, under that
12 authority only?

13 MS. LARYEA: Your Honor, I guess there are two
14 steps. I guess the first thing is to determine that there's
15 clear and convincing evidence that Boeing is an ongoing
16 danger.

17 Now, if that step is met in terms of fashioning
18 the least restrictive conditions, I think that -- the
19 question, I obviously haven't seen it happen before --

20 THE COURT: Right. But hold on a second. Hold on
21 a second.

22 MS. LARYEA: -- your question is whether --

23 THE COURT: Hold on a second.

24 You keep saying this is unprecedented and you
25 haven't seen it happen before. Tell me how many cases that

1 you examined to be able to make that statement where 300-odd
2 people have been killed by the corporation?

3 Just how many did you review to come up with that
4 number that it's unprecedented?

5 MS. LARYEA: So cases that have involved the
6 deaths of over 300 people, none, your Honor.

7 THE COURT: Okay. Well, then, this case is
8 unprecedented. Would you agree with that?

9 MS. LARYEA: Yes, your Honor.

10 THE COURT: Okay. So what is the effect of you
11 keep telling me that these things are unprecedented?

12 Is that just a rhetorical device to back me down,
13 do you think?

14 MS. LARYEA: No, your Honor. I was going back to,
15 you know, 3142 and conditions that are necessary to avoid
16 dangers to the community.

17 Now, with respect to that authority, your Honor
18 can fashion conditions as you believe are appropriate. As I
19 mentioned before, the government defers to the Court on the
20 determination of what those conditions are.

21 The reason I said it's unprecedented is there was
22 a question about whether this -- what this independent
23 examiner would do. And I was just saying, I don't know what
24 that would look like, because I don't have that experience.

25 But under 3142, I believe, yes, your Honor has the

1 ability to fashion conditions that it believes are
2 appropriate to protect the community.

3 THE COURT: You say that they have been in
4 compliance with the anti-fraud efforts, the ethical board,
5 all of the things that you all have laid out in there over
6 the last two years.

7 Has there been any instance over the last two
8 years where DOJ has been examining compliance with the DPA
9 and you've had to make a correction or point out to Boeing
10 that you want them to do something different?

11 MS. LARYEA: Yeah. So I think the answer to
12 that -- so the answer to that is, yes, the Department is
13 always -- sometimes pushing back on what needs to be done
14 and additional steps that need to be taken.

15 To the extent their auditors or other independent
16 individuals that are involved in looking at the company,
17 meeting with those individuals, independent of the company,
18 to talk to them, to get their perspective --

19 THE COURT: Meeting with who independent?

20 Can you say that again?

21 MS. LARYEA: Sorry. Individuals that, you know,
22 maybe either audit or examine the company or an independent
23 consultant, compliance consultants that may be contracted by
24 the company --

25 THE COURT: I see.

1 MS. LARYEA: -- meeting with them independent of
2 the company --

3 THE COURT: I see.

4 MS. LARYEA: -- to get their unvarnished opinion
5 as to if there are additional steps that Boeing needs to be
6 taking to enhance or further enhance its compliance program.

7 THE COURT: And so, to answer my question then --

8 MS. LARYEA: Sorry. Go ahead.

9 THE COURT: -- the answer is yes?

10 MS. LARYEA: Yes. We do push back on additional
11 steps that can be done.

12 THE COURT: And I guess my question to you or just
13 let me ask a follow-up to that then. I know that you do
14 that generally speaking. Have you done that in this case?

15 MS. LARYEA: My understanding is yes, but I'm
16 happy to verify that and get back to the Court.

17 THE COURT: Okay. Just based upon your
18 understanding, as you stand here today, on what point or
19 what fact or what was Boeing doing that was not up to snuff,
20 up to compliance, in the Department's view, that you had to
21 push back on?

22 MS. LARYEA: I don't have the answer on that, your
23 Honor, but I'm happy to supplement if that would be helpful.

24 THE COURT: Well, I guess the reason why I'm
25 asking is because, as you acknowledge, to the extent that

1 any of these things affect protecting the public, then
2 wouldn't that be an important factor or important fact for
3 me to consider when determining under 3142 what I ought to
4 do vis-a-vis the movants' request?

5 MS. LARYEA: Yes, your Honor. I guess my response
6 to that would be it goes back to we take our responsibility
7 seriously to make sure of that.

8 THE COURT: I'm not questioning that.

9 MS. LARYEA: And so, to the extent our compliance
10 experts are seeing things or after talking to independent,
11 you know, consultants outside of Boeing or seeing things,
12 additional steps they think Boeing needs to make, that is
13 being communicated to Boeing, and that is then a follow-up
14 to make sure that they are, in fact, taking those steps.

15 Because, as I mentioned, one of the requirements
16 in order for us to, at the end of this term, determine
17 whether to dismiss the information, to make sure Boeing
18 meets the high standard that is Attachment C, which is to
19 make sure its compliance program is designed and working
20 appropriately.

21 THE COURT: Okay. Yeah, if you could follow up on
22 those points. I don't know --

23 MS. LARYEA: Yeah, I can.

24 THE COURT: -- do they know?

25 MS. LARYEA: No, they do not. We would have to

1 come back. I don't know if we're going to get a break, I
2 can make a phone call if that would be helpful.

3 THE COURT: Well, let me just hear from Boeing.

4 MR. FILIP: Yes, sir, your Honor.

5 And everyone in the courtroom, please know that
6 Boeing takes this matter very seriously today.

7 In addition to Mr. Delaney with us in the
8 courtroom today, Uma Amuluru, who is the chief compliance
9 officer at Boeing, and Brett Gerry, who's the chief legal
10 officer at Boeing, and both of them, as well as Mr. Delaney
11 are members of Boeing's executive council.

12 THE COURT: Thank you.

13 MR. FILIP: They all came because they wanted to
14 hear what the family members said. Of course, they want to
15 be respectful to you, sir, but I just want to make clear
16 that we respect the presence today and the views and the
17 pain expressed by the families and those who lost loved ones
18 on Lion Air, Flight 610, and Ethiopian Air, Flight 302.

19 If I could, sir, please, I would like to, and we
20 will be brief, I'm going to speak to a couple factual
21 issues, and then proceed by way of proffer consistent with
22 18 U.S.C. 3142, and then Mr. Hatch is going to speak to some
23 of the legal issues, if that's okay, sir.

24 Let me start out, please, by touching on something
25 that goes to air safety because you were talking about that,

1 folks have talked about that at various points. And if I
2 could, sir, as an officer of the Court, let me please
3 proffer the following facts concerning supervision and
4 oversight of Boeing by the Federal Aviation Administration.

5 The Federal Aviation Administration is part of the
6 U.S. Department of Transportation. And thus, it's subject
7 to budgetary and oversight control of the federal
8 government, including U.S. Congress. It's the largest
9 transportation agency in the federal government, and it's
10 responsible for regulating civil aviation in this country.

11 According to the budget materials, the FAA seeks
12 federal funding for 2023 in the amount of over \$23 billion.
13 Public FAA materials further explain that the FAA has tens
14 of thousands of employees in various roles, including
15 overseeing safety and certification of civil aircraft.

16 And if I could, sir, in your opinion of
17 October 22nd, 2022, the Court, at page four, stated that the
18 FAA's aircraft evaluation group or AEG is "considered the
19 world's leading aviation authority. The gold standard
20 amongst global aviation regulators," and then the sentence
21 proceeds with the Court's order.

22 Obviously, not all of those tens of thousands of
23 people are involved with Boeing, but Boeing does estimate
24 that over 1,000 FAA employees are directly and indirectly
25 involved in overseeing the building and certification of

1 Boeing commercial aircraft.

2 These include individuals who work in the Boeing
3 aviation oversight office, the aircraft certification
4 offices, the flight standard service, and the certification
5 management office.

6 And additionally, the Aircraft Certification
7 Reform and Accountability Act, which Congress passed in
8 December 2020, required specific technical oversight
9 requirements to be performed by the FAA.

10 In November of 2020, the FAA, after review,
11 cleared the Boeing 737 MAX for return to flight in the
12 United States.

13 And since that date, the return to service of the
14 737 MAX has more than 3 million flight hours and more than
15 1 million safe revenue flights. We just wanted to share
16 that, sir, with respect to air safety oversight that exists
17 despite it being an independent body.

18 Let me also, please, sir, proffer some facts
19 concerning the DOJ oversights and how that might bear on a
20 judicial monitor or whatever one might call it.

21 You will hear my colleague, Mr. Hatch, will cover
22 these arguments, that Boeing believes the imposition of a
23 third-party monitor is unnecessary, number one. And that's
24 because the DPA itself has established a robust supervision
25 mechanism which is led by experienced prosecutors and

1 compliance specialists at DOJ, as well as Boeing's chief
2 compliance officer, Miss Amuluru, and that has been in place
3 and working well for over two years.

4 So by way of background as reflected in the DPA,
5 the Justice Department considered but determined that an
6 independent compliance monitor was unnecessary. And there's
7 citations to the DPA. If you need it, sir, we're happy to
8 provide those.

9 That decision followed the Department's review of
10 Boeing's then-existing compliance programs and internal
11 controls under standard DOJ processes and procedures that
12 sort a path for all things to proceed.

13 And the DPA establishes a direct DOJ oversight
14 mechanism by requiring the company to regularly meet with
15 and report to the criminal division, its fraud section, as
16 enumerated in the DPA.

17 So as a consequence, since January 2021, and under
18 the Department's close oversight, Boeing has been required
19 to test and enhance its compliance program and regularly
20 report the results of that test and improvements to the DOJ
21 through detailed work plans, quarterly meetings, and
22 comprehensive annual reports.

23 And that regular cadence of reporting and
24 interchange with the Department provides DOJ extensive
25 insight into the company's compliance program and work and

1 regular opportunity to review all the assessments and
2 improvements.

3 The Department actively reviews Boeing's reports
4 and provides feedback directly to Boeing on how to better
5 test and assess its compliance processes and structure
6 throughout the company.

7 And in addition, as required by the DPA, Boeing
8 promptly reports to DOJ allegations of any potential
9 violations of U.S. fraud laws.

10 The Department's oversight of these compliance and
11 reporting activities is directed at the Justice Department's
12 fraud section, corporate enforcement fraud unit. That unit
13 has specialized skills and expertise in corporate compliance
14 programs and its release of publications and policies and
15 best practices for corporate compliance that are very
16 influential, you know, throughout the world.

17 The company meets at least monthly with
18 representatives from the fraud section, corporate
19 enforcement, compliance and policy unit to discuss the
20 investigation and remediation of reported concerns.

21 These meetings include Boeing's chief compliance
22 officer, Miss Amuluru, who herself is a former DOJ
23 prosecutor, as well as Boeing's director of corporate
24 investigations, and numerous other investigation and
25 compliance personnel.

1 This forum also provides Boeing and DOJ an
2 opportunity to discuss trends in other areas to address
3 through the company's broader improvements through its
4 compliance program.

5 Following the MAX accidents, Boeing has made
6 fundamental governance, leadership, and organizational
7 changes, each time enhancing the company's enterprise safety
8 efforts and fostering a culture of safety, quality,
9 integrity, and transparency.

10 These changes include the creation of the role of
11 the chief aerospace safety officer, top executive position
12 at the company, which has been filled by Mr. Delaney,
13 Boeing's representative here today.

14 And under the leadership of Miss Amuluru, the
15 company has also enhanced its compliance function resources
16 through internal promotions and hiring of external resources
17 and by seeking feedback from numerous external compliance
18 experts on possible improvements and to ensure that
19 improvements identified through this work are implemented in
20 a lasting and meaningful way.

21 In summary, Boeing believes that the supervision
22 mechanism established in the DPA is robust and it's been
23 functioning well since its inception two years ago and that
24 the record proves that.

25 DOJ has been vigilant and thorough. They're

1 professional and they probe, and they make suggestions, and
2 as you would imagine, Boeing accepts those suggestions. And
3 Boeing has been vigilant and thorough too.

4 We sincerely believe the system is working and
5 that any further monitor or examiner, reporting, would be
6 duplicative to DOJ oversight and counterproductive to the
7 processes that are operative now.

8 And we also believe this current structure
9 respects the primary roles and responsibility of the FAA in
10 accordance with respective safety measures. Thank you, sir.

11 I'll turn things over to Mr. Hatch now, if that's
12 okay.

13 THE COURT: Thank you.

14 MR. HATCH: Thank you, your Honor. May it please
15 the Court.

16 I certainly echo Mr. Filip's statements with
17 regard to the statements made by family members who lost
18 loved ones.

19 Your Honor, I will endeavor not to repeat points
20 Ms. Laryea made, which I agree about the bases for not
21 imposing special conditions and a bond in this case. I will
22 try to address a few additional points that I think are
23 important for the Court.

24 I would like to start, actually with the question
25 the Court asked Miss Laryea about the interaction between

1 Boeing and the Department about if there have been issues or
2 that sort of thing.

3 If I could just share my perspective having the
4 privilege to represent Boeing as it engages with the
5 Department in that respect. I think the message that the
6 DOJ pushes through its guidance and has pushed to Boeing,
7 and I will not get into any confidential communications
8 consistent with the DPA, but the message is one of
9 continuous improvement in your compliance program.

10 And so, if there's an issue that's identified in
11 there and it was properly responded to in that specific
12 instance, okay, what did the company learn from that
13 specific instance to improve more generally?

14 Could there be more training? Could there be
15 structural changes? So even if a particular instance was
16 handled correctly, how can you learn from that? How can you
17 continuously improve?

18 And so, from my perspective, that's how those
19 conversations go. They're collaborative. They do pressure
20 test very much what we do. They challenge us to, okay, what
21 can you learn? What can you do better?

22 So it's really been a process. We're two years
23 in, we see this, we see that, let's take that to this --
24 continuous improvement to this next level. And my
25 perspective is it has been a great success under the

1 Deferred Prosecution Agreement.

2 And that brings me to the 3142 analysis that I
3 know the Court would engage in here. I would just start
4 with the point that the government is not seeking any
5 special conditions, which I think is very significant,
6 having had now two years of experience under very close
7 oversight of Boeing in this.

8 I think it's significant that the Court, as it
9 approaches a bond consideration today, Mr. Cassell referred
10 to a bank robber who might come before the Court on arrest,
11 and this, of course, is a very different case from this.

12 This is a case that comes to the Court two years
13 at this point into a Deferred Prosecution Agreement. So
14 it's a resolved case, agreed to under the Deferred
15 Prosecution Agreement, and then proceeding to a deferred
16 during that time for Boeing to prove its compliance with the
17 agreement.

18 So the Court, I would urge, should evaluate fine
19 conditions based on two years of compliance. And
20 Miss Laryea confirmed again today, as DOJ has in prior
21 filings, that Boeing has complied with the agreement up to
22 this point. So there's two years' track record.

23 And as Miss Laryea said, the only basis the Court
24 would start under 3142(b), which provides for a personal
25 recognizance bond, unless the Court finds a risk of flight

1 or safety to the community. So the default under the
2 statute is a personal recognizance bond.

3 The only basis that's urged upon the Court is a
4 danger to the community. So I will only address that unless
5 the Court were to have any other questions about the other
6 conditions.

7 But with respect to danger to the community, there
8 are really, I think, two key facts that can give the Court
9 comfort that additional conditions are not needed. First,
10 there's the active and substantive and meaningful oversight
11 of the DOJ under the DPA.

12 And Mr. Filip's proffer covered that this is not
13 just like an annual report that goes in once a year and then
14 there's a follow-up meeting. The company is engaged at
15 least monthly in meetings with the Department across all
16 respects of the DPA in its compliance.

17 So it is a very active, it's a very meaningful and
18 substantive process over the life of the DPA. It's very
19 real oversight. So that's with respect to compliance.

20 And then, as Mr. Filip also touched upon, in
21 review of Mr. Cassell's filing from last night, at times it
22 seems to say, well, we're not asking -- we're not asking the
23 Court to put a safety monitor in place, but then Mr. Cassell
24 also said it would ensure the safety of the community.

25 So I'm not exactly sure what the position is

1 there, but to the extent they are asking for some sort of
2 safety monitor, of course, there's the FAA, which is a very
3 robust, very engaged, and meaningful regulatory oversight
4 that is every day protecting the safety of the community,
5 every day the people all across this country and all around
6 the world who board Boeing flights, every day the U.S.
7 military flies Boeing airplanes, Boeing is subject to
8 extensive oversight, and I note the Court has heard evidence
9 of that in the course of these proceedings.

10 And so, the FAA is engaged and is charged by
11 Congress with that oversight. And again, we're two years
12 into this. And with regard to the MAX specifically, of
13 course, that had an extensive period of redesign and then it
14 was returned to service, as you heard from Mr. Filip, has
15 had many, many successful flights since its return to
16 service.

17 I think that the special condition of urging a
18 monitor or an examiner, whatever that would be, presents a
19 very -- the Court asked a question, you know, could I, you
20 know, just impose one separate from looking behind DOJ?

21 I think the monitor that's asked for is one that
22 goes behind DOJ. And in my view, that is seeking this plan
23 from the Department in its exercise of its own discretion
24 under the Deferred Prosecution Agreement.

25 And what Mr. Cassell is asking for is not a bond

1 condition monitor, it really goes to the ultimate remedies
2 that they are seeking in this case, which I know the Court
3 has before it separately.

4 But to the extent that they're seeking some form
5 of safety monitor, I think that presents a very real risk.
6 Because if the Court imposed the safety monitor as a bond
7 condition, what if that monitor were to direct some action
8 that was different from what the FAA or the DOJ was
9 directing under their respective authorities that gives the
10 prospect of different direction on issues of public safety
11 under the auspices of a court-appointed bond monitor when
12 the record is that the FAA is there, it's robust, and it's
13 active, and that is who Congress has charged with the
14 aerospace safety and the oversight of Boeing's respective
15 safety.

16 So, respectfully, I think there is not evidence,
17 as the Court finds the case today, for applying conditions
18 with respect to the safety of the community.

19 Mr. Cassell has referred in his filing to their
20 proffer that has been separately submitted to the Court.
21 And we, of course, have objected to that. I believe the
22 Department of Justice has objected to that, but that proffer
23 is also with respect to historical facts that occurred
24 before the Deferred Prosecution Agreement.

25 That's, I think, very significant as we are here

1 two years in after the FAA has returned the MAX to service
2 and after the Department has had this two years of
3 experience monitoring -- well, not monitoring but overseeing
4 Boeing in its compliance.

5 So I think the Court can just follow 3142(b). And
6 the analysis is as simple as that, because there is not
7 evidence of separate conditions or a danger to safety of the
8 community as the Court finds the case today.

9 A couple of additional points with respect to the
10 additional conditions that were urged. Even if the Court
11 were to go to 3142(c) which, again, I don't think there's
12 evidence today to get it to 3142(c), but if the Court were
13 to find it appropriate, we would request the least
14 restrictive conditions that would ensure the safety of the
15 community, and respectfully, these two conditions are not
16 the least restrictive.

17 I agree with Miss Laryea, if it's helpful for the
18 Court, and I understand the Court has indicated the loss of
19 life that may not be present in other cases, but we also
20 reviewed and did not find any other cases where courts have
21 imposed the types of monitors or third-party experts that
22 were proposed here.

23 A case I know the Court's familiar with, the
24 Faulkner Services case from the D.C. Circuit I think is
25 particularly close, even though it's not exactly the same.

1 In Faulkner Services, Judge Leon, at the district
2 court level, had rejected the DPA on the grounds -- several
3 grounds, but one of them was that it was insufficient
4 because it did not provide for a corporate monitor.

5 And on appeal to the D.C. Circuit, the D.C.
6 Circuit overturned and said that the Court does not have a
7 role in reviewing compliance with the DPA. And, of course,
8 that was not under a bond analysis, but I think that same
9 point holds true.

10 That's what's essentially asked here is to impose
11 a role in monitoring compliance with the DPA, but do it
12 through a bond condition. So I think the closest case is
13 the Faulkner Services case. And in that case, counsel is
14 against the two monitoring issues that are urged here.

15 Your Honor, just in conclusion, unless the Court
16 has any further questions -- well, one last point on the
17 conclusion. On the aspect of these disclosing our reports
18 under the DPA and applying these three separate experts that
19 have been proposed, I think it's a very important part of
20 the DPA that it provides a confidentiality both for Boeing,
21 but also more generally in this case.

22 Part of the process that the DPA encourages is to
23 be candid and to share information so the DOJ can evaluate
24 that and give you that feedback. That's what I think the
25 agreement recites.

1 The reason to protect that is so that companies
2 can be very candid without fear of having their confidential
3 information released publicly or released to third parties.
4 That fosters the kind of collaborative environment that I
5 believe is encouraged under the DPA and discourage you to
6 release that.

7 And just in conclusion, your Honor, that the
8 record, as it comes to the Court today for its bond
9 determination, is that DOJ is substantively and effectively
10 monitoring compliance with the DPA and has done so for two
11 years of the three-year term, and that the FAA monitors
12 safety.

13 And that that has worked for the two years of the
14 DPA. And therefore, there is not a need for any special
15 conditions to change that successful dynamic. Thank you,
16 your Honor.

17 THE COURT: Could I just ask you one question as
18 it relates to your argument about the D.C. Circuit Court and
19 the monitor.

20 Would I be outsourcing my obligations under 3142
21 to the Department of Justice on the protection of the public
22 because DOJ is monitoring?

23 In other words, would I be relying on DOJ to tell
24 me when DOJ feels like what they're doing is a danger to the
25 public, as opposed to making my own independent assessment?

1 MR. HATCH: Yes. Thank you, your Honor.

2 And the answer is, no, you would not be. Again,
3 if we were back at the beginning of a case and there wasn't
4 an agreement and the Court were to have a bond hearing and
5 say, rather than use pretrial services to monitor a
6 defendant, for example, I'm just going to rely on, you know,
7 DOJ maybe to tell me if they find anything out, that sort of
8 thing.

9 You know, of course, the Court uses pretrial
10 services to monitor. That's in the case of a defendant who
11 is pending trial. That I think is very significant here.
12 We have a case in which there's an agreement. So the
13 proceedings are deferred.

14 There is no pending trial. The reason that
15 proceedings are deferred is so that Boeing can demonstrate
16 its compliance with the DPA.

17 And so, here, unlike the scenario of the
18 courthouse, DOJ has come to the Court and said, this is the
19 agreement, and it's in paragraph 4H in the DPA, your Honor,
20 that indicates the factors DOJ considered in determining
21 that an independent monitor was not necessary under their
22 policies and in their discretion.

23 And one of those factors, and I think it's very
24 significant, they pointed to all the remedial measures that
25 the company had already engaged in prior to entering into

1 the DPA.

2 So they recognize that the company had undertaken
3 all these things, even to change the state of play in terms
4 of compliance at the time of the DPA, and now we're two
5 years past that.

6 So the Court isn't outsourcing its obligation.
7 The way I think about it, the Court looks at 3142(b) and
8 says, bond is the default, unless there's danger of safety
9 to the community.

10 So what's the record that there's a danger of
11 safety to the community? Because of what DOJ is doing today
12 and has done for two years and will do for the remainder of
13 the term and because of what the FAA is doing, there is not
14 evidence of a danger to the community.

15 In other words, there has to be affirmative
16 evidence of a danger to the community to warrant some
17 special conditions. Here, given the default that is already
18 existing, that doesn't exist, and the Court need not impose
19 those sanctions -- excuse me, special conditions.

20 THE COURT: Okay. Very good. Thank you then.

21 All right. I will --

22 MR. CASSELL: Can I just briefly be heard in
23 response?

24 THE COURT: Okay. Briefly.

25 MR. CASSELL: Thank you, your Honor.

1 I think we've got two very odd things going on in
2 this court. We haven't heard any dispute that Boeing has
3 committed the deadliest crime in U.S. history, corporate
4 crime. And yet, neither the government nor Boeing wants you
5 to impose even a single condition of release.

6 You add conditions of release in routine bank
7 robbery cases every day. Why this case would somehow not
8 warrant even a single condition of release is frankly beyond
9 my imagination.

10 One small thing we heard from the Justice
11 Department, that you have to make findings by clear and
12 convincing evidence. The Department is mistaken on that.
13 The statute they're referring to is 3142(f), detention
14 hearings, when somebody's liberty is being taken away.

15 We point out in our brief about a Fifth Circuit
16 case in U.S. v. Fortna, 1985 case, conditions of release is
17 "simple preponderance of the evidence." So the issue for
18 you today is what does the simple preponderance of evidence
19 show?

20 I think I will just respond to the three points
21 the government made very briefly. They say this is
22 unprecedented. I think your Honor pointed out we are in
23 unprecedented territory.

24 What would be unprecedented is the Court imposing
25 no conditions whatsoever following a crime that killed 346

1 people. That would be, as we indicated in our brief,
2 outsourcing the Court's obligation.

3 The Department says, well, we can't find any
4 cases. We're not looking for cases here. 3142(c) nobody
5 has disputed, which gives you the authority to impose every
6 single condition the families are asking for, which are
7 only two.

8 I think your Honor put it nicely: These would be
9 perhaps overlapping to some degree with the DPA. But as you
10 know, the DPA has been challenged and we are hopeful that in
11 the next few weeks we will see a ruling from your Honor
12 rescinding parts of that agreement or perhaps even
13 invalidating a significant part of the agreement.

14 So it would be very useful to have overlapping
15 requirements in the wake of the fact that that is an illegal
16 agreement, an agreement that at least was negotiated
17 illegally. Having overlapped measures in place would be, I
18 think, protective of the public safety.

19 We're told by the Department this is unnecessary
20 to protect community safety. I don't think the Department
21 is in the best position to make that call. They have an
22 obvious conflict of interest here.

23 This DPA is the most controversial DPA in the
24 history of America. That's no exaggeration. We've provided
25 the citations to that in our briefs.

1 Yet, you can count on the Department to report if
2 there are problems in this DPA? Understandably, I'm just
3 making a point about human nature. I'm not criticizing
4 anyone's motives. The Department obviously has an incentive
5 to say everything is good, nothing to see here, move along
6 to the next case. That's why we want an independent set of
7 eyes to take a look at all of this.

8 It's obvious that you've heard today that the
9 victims' families don't trust the Justice Department in this
10 case and their distrust extends more broadly.

11 The key question you have to decide this morning
12 is, what is better, one set of eyes from the Department, or
13 two sets of eyes, the independent sets of eyes that we are
14 proposing?

15 Put it a different way, a legal way, what will
16 more reasonably assure the safety of the community? We're
17 defending a simple proposition: Two sets of eyes are better
18 than one. And if you agree with 3142(c), I would submit,
19 requires you to impose additional conditions.

20 We're told this DPA has been in place for two
21 years and everything is great, except the Department can't
22 even tell you whether there have been problems and pushbacks
23 and things like that.

24 Of course, your Honor has to make a ruling today
25 about conditions of release, not even knowing whether Boeing

1 has been having difficulties administering this.

2 We are told from Mr. Hatch that, "We've made these
3 significant changes. We want to take compliance safety to
4 the next level." Well, we can help Boeing get to the next
5 level. Let's put an independent person in there to see what
6 they could do better.

7 Let's put three advocates for the victims'
8 community in there and see what they could do better. If
9 Boeing wants to get to the next level, we'll help them take
10 off to that next level with the measures that we are
11 proposing here.

12 Now, we're warned by Mr. Hatch, oh, your Honor, if
13 you do this, there's going to be conflicting obligations,
14 and, you know, one thing and the other and so forth. That's
15 not what we're proposing.

16 He must not understand what we are proposing. You
17 had a chance to read our brief. What we are proposing is,
18 take a look at Boeing's efforts, and then see if there are
19 recommendations for improvement that could be made. That's
20 all we're asking for here, a very modest request. We are
21 not asking the Court to take over production lines or
22 anything along those lines.

23 Now, let's see. Let's see, what else? The other
24 thing we are asking for, we've heard from the Department
25 that somehow our three experts are not disinterested. We

1 never said that they were disinterested experts.

2 We said they would be effective advocates for the
3 victims' families and for the broader community to make sure
4 things were being done properly and the safety of the flying
5 public was assured.

6 That's what's been missing so far. We haven't
7 seen that -- we haven't seen that kind of advocate's eye
8 looking at this. Instead, we've seen the Department and
9 Boeing working behind closed doors to craft something that
10 will let them move along to other issues.

11 We are not asking you for you to disclose any
12 reports that Boeing has filed. All we're asking for
13 disclosure on is, under appropriate confidentiality
14 measures, is the substance of what Boeing is doing, a second
15 set of eyes could look at that to see whether there were
16 improvements that could be made.

17 We've heard from Boeing the FAA is out there
18 supervising all this. We know sadly that that supervision
19 was not successful in preventing two crashes.

20 So I will close with this, the reason the victims'
21 families traveled all over the world today comes down to
22 three words: No third crash.

23 The only question we submit that you have in front
24 of you today is which way will better prevent a horrific
25 third crash, doing nothing, as they propose, or a second set

1 of eyes, as we propose? We think the answer to that
2 question is obvious.

3 THE COURT: Okay. Thank you.

4 So why don't you provide me an update on the
5 question I asked. You can provide it ex parte under seal or
6 deliver a hard copy to me, however you prefer. I will
7 review that.

8 In the meantime, I will order, sir, that Boeing is
9 ordered not to commit another federal, state, or local crime
10 while on release as this case is pending.

11 And then I will take the other information under
12 advisement pending your submission.

13 Just for record purposes, I've reviewed all of the
14 letters that were provided to me by the movants. And then,
15 Mr. Jacobs provided to me an emergency letter sometime late
16 last night, which I have reviewed as well. I will make sure
17 that is docketed.

18 MR. CASSELL: Your Honor, just one small point. I
19 know this morning that Miss Berthet was unable to complete
20 her oral statement --

21 THE COURT: So file it.

22 MR. CASSELL: -- we would like to file a written
23 statement.

24 THE COURT: File it on the docket.

25 Then we are in recess. Thank you all.

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THE COURT SECURITY OFFICER: All rise.

(The proceedings concluded at 12:08 p.m.)

REPORTER'S CERTIFICATE

I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter to the best of my ability to hear.

Further, due to the COVID-19 pandemic, some participants are wearing masks, and/or appeared via videoconferencing, so proceedings were transcribed to the best of my ability.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 27th day of January, 2023.

_____/s/ Zoie Williams_____
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